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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION: HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Internally displaced persons

Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57

Compilation and analysis of legal norms*

CONTENTS

	Paragraphs	Page
Introduction	1 - 5	3
I. SCOPE AND CONTENT	6 - 12	4
A. Structure and methodology	6 - 7	4
B. Definition and context	8 - 12	4

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* In view of its length, the present document is being issued in the original language only, the Conference Services Division of the United Nations Office at Geneva having insufficient capacity to translate documents that greatly exceed the 32-page limit recommended by the General Assembly (see Commission resolution 1993/94, para. 1).

CONTENTS (*continued*)

		Paragraphs	Page
II.	APPLICABLE SOURCES OF LAW AND THEIR RELEVANCE TO DISPLACEMENT IN RECOGNIZED SITUATIONS	13 - 46	6
	A. Human rights law	13 - 20	6
	B. Humanitarian law	21 - 23	8
	C. Refugee law	24 - 26	8
	D. Displacement in recognized situations	27 - 46	9
III.	ANALYSIS OF INTERNATIONAL LAW RELEVANT TO THE PROTECTION AND ASSISTANCE NEEDS OF INTERNALLY DISPLACED PERSONS	47 - 358	16
	A. Equality and non-discrimination	48 - 65	16
	B. Life and personal security	66 - 142	20
	C. Personal liberty	143 - 179	39
	D. Subsistence needs	180 - 220	47
	E. Movement-related needs	221 - 257	57
	F. Need for personal identification, documentation and registration	258 - 268	66
	G. Property-related needs	269 - 284	68
	H. Need to maintain family and community values	285 - 322	71
	I. Need to build self-reliance	323 - 358	80
IV.	NEED FOR INTERNATIONAL PROVISION OF PROTECTION AND ASSISTANCE	359 - 409	89
	A. Need to receive and to provide assistance	359 - 389	89
	B. Needs of relief workers and organizations	390 - 409	99
V.	CONCLUSIONS	410 - 416	103

Introduction

1. At its fifty-first session, the Commission on Human Rights, in its resolution 1995/57 of 3 March 1995 on internally displaced persons, encouraged the Representative of the Secretary-General "to continue his review of the need for protection of and assistance to internally displaced persons, including his compilation and analysis of existing rules and norms ...". In accordance with that resolution, the following compilation and analysis of legal norms relevant to the status of internally displaced persons is submitted to the Commission for consideration.

2. The present document is based on two studies undertaken at the request of the Representative. One study was prepared by the Ludwig Boltzmann Institute of Human Rights (Austria) and was authored by Manfred Nowak and Otto Linher. Another study was undertaken jointly by the American Society of International Law and the International Human Rights Law Group (United States of America) and was written by Robert K. Goldman, Cecile E.M. Meijer and Janelle M. Diller. These studies were reviewed at a meeting of legal experts in Vienna in October 1994 and were subsequently submitted to the 1995 session of the Commission on Human Rights ((E/CN.4/1995/CRP.1), see addendum 3 to the Representative's report (E/CN.4/1995/50/Add.3)). They were further reviewed at a smaller meeting of experts which took place in Geneva in May 1995, after which they were merged and edited by Walter Kälin (Switzerland) at the request of the Representative. The merged document was reviewed and approved at a small expert meeting held in Washington, D.C. in September 1995.

3. This compilation has benefited from the work, experience and support of several Governments, institutions and individuals. The Representative is most grateful to the major contributors who are cited above, and also thanks Daniel Helle and Maria Stavropoulou of the United Nations Centre for Human Rights who contributed to the compilation and analysis. Special mention should also be made of and appreciation expressed to the many experts from international humanitarian organizations, the United Nations Centre for Human Rights, regional bodies, non-governmental organizations and the legal community who provided valuable comments. The contributions of students at the Washington College of Law of The American University and its Center for Human Rights and Humanitarian Law are also gratefully acknowledged. The generous support of the Government of Austria is acknowledged for hosting the meeting of experts in Vienna. In addition, the compilation benefited from the "Study on Internal Displacement" being conducted by the Brookings Institution and the Refugee Policy Group, which has received support from the Office of the Secretary-General, the Governments of the Netherlands, Norway and Sweden, the Ford Foundation and the McKnight Foundation. Further, the American Society of International Law and the International Human Rights Law Group received support from the Jacob Blaustein Institute for the Advancement of Human Rights and the Hauser Foundation. The Ludwig Boltzmann Institute of Human Rights gratefully acknowledges the support of the Government of Austria.

4. This compilation and analysis of legal norms relevant to internally displaced persons aims at restating obligations within the framework of existing norms as well as identifying areas where existing international law does not respond adequately to the protection and assistance needs of internally displaced persons. While this report should sharpen awareness of

the legal problems faced by internally displaced persons, its conclusions will show that there is still a need to proceed further and to elaborate an appropriate international instrument: existing international law as applied to internally displaced persons consists of a highly complex web of norms originating from a variety of legal sources which makes its application in specific situations of internal displacement difficult unless it is restated in a concise form.

5. Chapter I of this report examines the guiding definitions and context of the study. Chapter II details the applicable sources of human rights, humanitarian law and refugee law used in this analysis and discusses the recognized situations in which displacement exists. It also discusses the applicability of the various sources of law in the differing situations. Chapter III analyses the legal norms that match each of the identified needs under the previously-described situations. Chapter IV discusses legal aspects of providing assistance and protection to internally displaced persons by the international community, including non-governmental organizations. Finally, chapter V sets forth basic conclusions.

I. SCOPE AND CONTENT

A. Structure and methodology

6. This report examines those existing international legal standards which are applicable or most relevant to internally displaced persons. The report approaches displacement from the perspective of the actual needs of internally displaced persons. A catalogue of these needs which have been derived from field reports, other relevant studies and discussions with experts is reflected in the organization of chapters III and IV of this report. For each of these needs, the report examines whether and to what extent existing norms of international law afford protection.

7. Such an analysis requires differentiation between the following situations: situations of tensions and disturbances, or disasters; non-international, i.e. internal armed conflict; and inter-State, i.e. international armed conflict. These situations may entail the simultaneous application of distinct but interrelated branches of public international law that have differing supervisory mechanisms. This report focuses in particular on three sources of international legal standards: human rights law, which is applicable in all situations; humanitarian law, which is applicable in situations of armed conflict; and refugee law which, although generally inapplicable to internally displaced persons, can serve as a model for how certain issues may be dealt with in a future international instrument applicable to internally displaced persons.

B. Definition and context

8. In the Analytical Report of the Secretary-General on internally displaced persons of 14 February 1992 1/ and the Representative's Comprehensive Study of 21 January 1993, 2/ the following working definition of internally displaced persons was presented. That definition is also employed in this report:

> "[P]ersons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country." 3/

9. Internally displaced persons are entitled to enjoy, in full equality, the same rights and freedoms under domestic and international law as do the rest of the country's citizens. However, experience has shown that such persons, in practice, rarely enjoy such rights and freedoms because displacement, by its very nature, generally entails deprivations of multiple rights. Along with its emotional cruelty, displacement often breaks up the nuclear family, cuts off important social and cultural community ties, terminates stable employment relationships, precludes or forecloses formal educational opportunities, and deprives those in need of special protection, such as infants, expectant mothers and the sick, of vital public/private sector services.

10. Although the displaced are frequently forced to flee their homes for the same reasons as do refugees, the fact that they remain within national territory means that they cannot seek to qualify as bona fide "refugees" entitled to the special protective regime accorded to refugees under international law. Moreover, their presence within national territory means that their own Government bears primary responsibility for meeting their protection and assistance needs. However, because Governments frequently cause or tolerate internal displacement and/or are unwilling or unable to guarantee the basic rights and meet the needs of their internally displaced citizens, intergovernmental organizations, their specialized agencies and non-governmental organizations have, at times, assumed these roles on an ad hoc basis. 4/

11. This compilation and analysis of legal norms focuses on those guarantees relevant to internally displaced persons, i.e. for the situation of such persons during displacement and return. It mentions the legal norms relevant for a right not to be displaced 5/ but does not discuss the specific content and the limitations of such a right in detail. There is a need to develop these areas in order to achieve comprehensiveness in the elaboration of the legal framework that relates to displacement although it must be stressed that, conceptually, a clear distinction has to be made between legal questions related to the causes and the prevention of displacement and guarantees relevant to those who already have been displaced. Although certain chapters of this report (particularly chap. III. E) mention these issues, it has been decided to refer the detailed analysis of a right not to be displaced to a separate study.

12. Already here it should be stressed that, apart from situations of natural disasters, the strict observation and full realization of all human rights for everyone is often the best method of preventing displacement. Thus, human rights and humanitarian standards play a paramount role when addressing the root causes of displacement.

II. APPLICABLE SOURCES OF LAW AND THEIR RELEVANCE TO DISPLACEMENT IN RECOGNIZED SITUATIONS

A. Human rights law

13. It is well established that all individuals are endowed with basic human rights which are inherent attributes of human dignity and which are recognized by virtue of international law that both recognizes and protects them. States, in turn, are obliged to ensure respect for those universally recognized human rights which are essential to the survival, dignity and well-being of all persons subject to their jurisdiction. In this regard, all States Members of the United Nations are mandated by Articles 55 and 56 of the Charter of the United Nations 6/ to "promote ... universal respect for, and observance of, human rights and fundamental freedoms for all ...". These clauses mark the foundation of the international law of human rights. While these articles do not define or specify "human rights and fundamental freedoms", the Universal Declaration of Human Rights is widely recognized today as an authoritative interpretation of certain obligations of States Members of the United Nations under the Charter. 7/

14. The sources of international human rights law referenced in this report include treaty and customary 8/ law. The former encompasses treaties that are open for ratification by all States as well as treaties constituting multilateral agreements among States in certain regions only. As a matter of international law, States parties to the universal and regional treaties are bound to observe the rights guaranteed in the treaty provisions, and to ensure that those rights are guaranteed under domestic law.

15. Among the referenced sources of universal law, the Universal Declaration of Human Rights 9/ is of particular importance not only as a ground-breaking general statement of international concern for human rights but also in so far as its basic tenets have now gained widespread acceptance. 10/ The International Court of Justice (I.C.J.), as early as 1949, recognized the existence of "elementary considerations of humanity" to be respected in times of peace and war. 11/ In 1970, the Court recognized that, in international law, there are "obligations of a State towards the international community as a whole" which may derive, *inter alia*, "from the outlawing ... of genocide, as also from the principles and rules concerning the basic rights of the human person" some of which "have entered into the body of general law." 12/ The Human Rights Committee, established pursuant to Part IV of the International Covenant on Civil and Political Rights, recently stated that because of the customary law character of the relevant guarantees, States could not "reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women and children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language". 13/

16. Universal treaty law relevant for this report includes the International Covenant on Civil and Political Rights 14/ and its two Optional Protocols, 15/ the International Covenant on Economic, Social and Cultural Rights, 16/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 17/ the Convention on the Prevention and Punishment of the Crime of Genocide 18/ (Genocide Convention), the International Convention on the Elimination of All Forms of Racial Discrimination, 19/ the Convention on the Elimination of All Forms of Discrimination against Women 20/ and the Convention on the Rights of the Child. 21/

17. Regionally specific sources of law include the American Declaration of the Rights and Duties of Man 22/ (American Declaration), the American Convention on Human Rights 23/ (American Conventin), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" 24/ (Protocol of San Salvador), the African (Banjul) Charter on Human and Peoples' Rights 25/ (African Charter), the European Convention for the Protection of Human Rights and Fundamental Freedoms 26/ (European Convention) and its Protocols, and the European Social Charter. 27/

18. In addition, this report utilizes United Nations General Assembly and Security Council resolutions. In general, General Assembly resolutions are not binding on States Members of the United Nations but, on matters concerning general norms of international law, their adoption by consensus or nearly unanimous acceptance can provide a basis for the progressive development of customary law. Many of the General Assembly resolutions referenced in this report represent non-binding but authoritative declarations. 28/ However, United Nations Security Council resolutions, especially those issued under Chapter VII of the Charter are legally binding on Member States.

19. The report also draws from human rights principles and standards proposed by expert non-governmental bodies, including the Siracusa Principles and the Paris Minimum Standards for Human Rights Norms in States of Emergency and the Turku/Abo Declaration of Minimum Humanitarian Standards. 29/ These standards gain popular authority through their acceptance and use over time, and the deference given to them by States.

20. Finally, the practice of treaty bodies such as the Human Rights Committee supervising the implementation of the International Covenant on Civil and Political Rights (ICCPR), the Committee on Economic, Social and Cultural Rights responsible for the supervision of the application of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Committee against Torture (CAT), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Discrimination against Women (CEDAW) and others are reflected in this report to the extent that they are relevant for internally displaced persons. Some of the activities of special rapporteurs, working groups and other mandates instituted by the Commission on Human Rights may also be important for internally displaced persons. Especially noteworthy are the mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 30/ the Special Rapporteur on torture, 31/ the Special Rapporteur on violence against women, 32/ the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related

intolerance, 33/ the Working Group on Enforced or Involuntary Disappearances, 34/ the Working Group on Contemporary Forms of Slavery, 35/ the Working Group on Indigenous Populations 36/ and the Working Group on Arbitrary Detention. 37/

B. Humanitarian law

21. International humanitarian law (hereinafter humanitarian law) is that branch of international law that regulates the conduct of hostilities in and seeks to protect the victims of armed conflicts. Besides the customary laws of war contained, *inter alia*, in the Hague Regulations of 1907, 38/ the principal sources of humanitarian law are the four Geneva Conventions of 12 August 1949, 39/ as well as Additional Protocols I 40/ (Protocol I) and II 41/ (Protocol II) of 1977. The Geneva Conventions are the world's most widely ratified multilateral treaties.

22. There is a wide consensus that the key provisions of these treaties, which are designed to protect the victims of all armed conflicts, have acquired the status of rules of general or customary international law binding on all States. 42/ The International Court of Justice, for example, has ruled that the guarantees laid down in common article 3 of the Geneva Conventions on non-international armed conflicts also apply, as customary law, to international armed conflicts. 43/ As Protocol II elaborates on and authoritatively interprets common article 3, many of its provisions arguably should be regarded as customary international law too and, therefore, should be respected by the parties to all internal armed conflicts. 44/ Furthermore, in the context of the establishment of the International Tribunal for the Former Yugoslavia, the guarantees protected by the prohibitions of grave breaches of the 1949 Geneva Conventions, of violations of the laws or customs of war, of genocide and of crimes against humanity were characterized as "rules of international humanitarian law which are beyond any doubt part of customary law". 45/

23. Based on the Geneva Conventions and the Additional Protocols, the International Committee of the Red Cross (ICRC) monitors the application of international humanitarian law. It promotes that law and contributes to its development. In addition, the ICRC gives protection and assistance to victims of armed conflicts and other situations of violence. It has a broad right of initiative allowing it to offer its services as a specifically neutral and independent intermediary. Thus, it contributes to the protection of and assistance to internally displaced persons in several regards. 46/

C. Refugee law

24. Refugee law provides rules for the legal status and treatment of refugees in host countries. It is not directly applicable to the internally displaced because, unlike refugees, internally displaced persons have not crossed an international border. Article 1 (A) (2) of the Convention Relating to the Status of Refugees 47/ (Refugee Convention) and the subsequent Protocol Relating to the Status of Refugees 48/ (Refugee Protocol) define a refugee as anyone who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, *is outside the country of his nationality* and is unable, or

owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (emphasis added). Regional refugee law instruments such as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 49/ and the Cartagena Declaration of 1984 50/ expand the situations under which refugee status is recognized to cases of foreign aggression, occupation, 51/ foreign domination, events seriously disturbing public order and, in the case of the Cartagena Declaration, to massive violations of human rights and domestic conflict; however, both instruments are restricted to persons who have left their country of origin or nationality.

25. Despite the fact that internally displaced persons remain in their own countries, they, like refugees, have been forced to leave their homes and find themselves in refugee-like situations. Consequently, refugee law, by analogy, can be useful in proposing rules and establishing guidelines to protect the needs of the internally displaced. This is why references to refugee law are included in this report. In addition, UNHCR documents 52/ such as the Guidelines on the Protection of Refugee Women or the Guidelines on Protection and Care of Refugee Children, as well as certain UNHCR Executive Committee Conclusions which provide guidance for States parties in implementing their obligations under the Refugee Convention and Protocol might also inspire standard-setting for internally displaced persons. However, one must take into account that, by definition, refugees are not citizens of the host country whereas internally displaced persons remain in their home country; therefore, many of the norms and guidelines relating to the status of refugees in the country of refuge or asylum which guarantee them equal treatment with aliens in that country 53/ cannot serve as a source of inspiration for analogous guarantees for internally displaced persons and have thus been excluded from this report.

26. UNHCR policy has direct application in those situations where UNHCR is directly authorized to protect and assist internally displaced persons. The agency has frequently been called upon to act on behalf of the internally displaced. Situations in which UNHCR has worked with internally displaced persons include its returnee programmes, 54/ special operations often undertaken at the request of the United Nations General Assembly or United Nations Secretary-General, 55/ and the providing of humanitarian and development assistance to refugees and internally displaced persons in a particular region. 56/ In 1993, the United Nations High Commissioner for Refugees formulated criteria for UNHCR's involvement with internally displaced persons and proposed that the agency take responsibility for internally displaced persons in certain situations. 57/ The General Assembly has reiterated its support for UNHCR's involvement with internally displaced persons. 58/

D. Displacement in recognized situations

27. International law recognizes three categories of situations, each of which is governed by a different set of norms, namely, (i) situations of tensions and disturbances, or disasters where human rights law is applicable, (ii) situations of non-international armed conflicts governed by some of the

most central principles of humanitarian law and by many human rights guarantees, and (iii) situations of inter-State armed conflict where the detailed provisions of humanitarian law become primarily operative although many important human rights guarantees remain applicable. These three recognized situations cover most cases of internal displacement and thus provide an analytical framework for the present compilation and analysis of legal norms.

1. Situations of tensions and disturbances, or disasters

28. Many internally displaced persons live in situations of internal tensions or disturbances, or disasters. The terms "internal tensions and disturbances" refer to situations which fall short of armed conflict, but involve the use of force and other repressive measures by government agents to maintain or restore public order. Examples of tensions and disturbances include riots, such as demonstrations without a concerted plan from the outset, isolated sporadic acts of violence, as opposed to military operations carried out by armed forces or armed groups; and violent ethnic conflicts not amounting to hostilities. A situation of serious internal tension characteristically involves specific types of human rights violations such as large-scale arrests and other large-scale measures restricting personal freedom, administrative detention and assigned residence, large numbers of political prisoners, and the probable existence of ill-treatment or inhuman conditions of detention. 59/

29. Disasters have natural or human-made origins. Examples include droughts, floods, earthquakes or typhoons, nuclear disasters or famine.

30. Human rights law, rather than humanitarian law, guides governmental conduct in the treatment of persons displaced in situations of tensions and disturbances or by disaster. 60/ Humanitarian law is inapplicable because internal tensions and disturbances do not amount to armed conflict.

31. Most human rights treaties including the ICCPR and the Convention on the Rights of the Child contain limitations clauses which permit Governments lawfully to restrict the free exercise of many rights during situations falling short of armed conflict in order to protect public safety or public health and morals, to restore order and to protect fundamental rights and freedoms of others. 61/ Thus, for example, a Government could impose a curfew within a riot-torn area without violating the freedom of movement. Likewise, disasters have been used to justify restrictions on otherwise guaranteed human rights. It must be stressed, however, that such limitations, according to most human rights treaties, are only permissible to the extent that they are prescribed by law and are really necessary for achieving the aforementioned purposes. The Siracusa Principles define a limitation as "necessary" if it "(a) is based on one of the grounds justifying limitations recognized by the relevant article ..., (b) responds to a pressing public or social need, (c) pursues a legitimate aim, and (d) is proportionate to that aim." 62/

32. Article 4 of the International Covenant on Economic, Social and Cultural Rights allows for limitations of its guarantees if they are determined by law, compatible with the nature of the rights concerned and necessary for

"promoting the general welfare in a democratic society". Thus, the principle of proportionality also applies here. In this regard, the Committee on Economic, Social and Cultural Rights has stressed that "any retrogressive measures" reducing an already achieved level of realization of such rights "need to be fully justified". 63/

33. Some human rights treaties also contain derogation clauses which permit States to derogate from, i.e. suspend, certain specified rights under narrowly circumscribed situations. 64/ For example, article 4 (1) of the International Covenant on Civil and Political Rights permits a State party to suspend temporarily certain guarantees:

> "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." 65/

34. Treaties containing derogation clauses regularly list several rights which cannot be suspended, even in times of emergency. Among these non-derogable guarantees are the right to life, the prohibition of torture and cruel and inhuman or degrading treatment and punishment, the prohibition of slavery and the prohibition of retroactive application of penal law. 66/

35. Although situations of tensions and disturbances, as well as disasters, could justify restrictions on certain human rights, they rarely constitute the kind of genuine public emergency that would permit a State to derogate from guaranteed rights. Suspensions of guaranteed rights are exceptional measures which are not self-judging by national authorities. The compatibility of such measures with the State party's international obligations is ultimately subject to scrutiny and review by the appropriate supervisory bodies established to monitor States parties' respect for guaranteed human rights. 67/ It should be noted that States rarely invoke derogation clauses.

36. Certain treaties do not contain a derogation clause, such as the ICESCR, the conventions on racial discrimination, torture and the rights of the child, the African Charter and the Protocol of San Salvador. 68/ All but the African Charter contain savings clauses to ensure that in effect, *inter alia*, non-derogable rights recognized by virtue of other treaties or laws are respected as such. 69/ States parties to these instruments can invoke certain limitations specified in those treaties which would generally be "sufficient to enable a State party to respond to an emergency situation in compliance with its obligations". 70/ However, certain limitations, such as those in the ICESCR requiring compatibility with the nature of the rights, prohibit interferences which result in a de facto derogation of the relevant guarantees. Thus, the Committee on Economic, Social and Cultural Rights has recognized the existence of "... a minimum core obligation to

ensure the satisfaction of ... minimum essential levels of each of the rights" and concluded that "[a] State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant." 71/

2. Non-international armed conflict

37. Once an armed conflict exists inside a country, humanitarian law becomes applicable to those internally displaced persons who live within that situation. Human rights law remains applicable as well, although its rights and guarantees are increasingly subject to restrictions and, in extreme cases, even derogation, except for the core of non-derogable rights. Nevertheless, human rights law and humanitarian law converge to a large extent in purely internal armed conflict situations and they reinforce each other. 72/

38. Human rights law generally restrains the abusive practices of only one party to the conflict, namely the Government and its agents. Since only States are proper parties to human rights treaties, it is usually the Governments of States that are internationally responsible for human rights violations under those treaties. Comparable abuses committed by private actors, such as rebels or other dissident groups, are not the subject matter of admissible complaints before monitoring bodies established under existing human rights conventions unless private acts are instigated, encouraged or at least acquiesced in by the Government concerned; otherwise, they are typically labelled as infractions of a country's domestic laws. However, the notion that non-governmental actors should be internationally responsible for human rights abuses has gained ground in recent years. To the extent that certain internationally recognized crimes are coextensive with proscriptions under human rights treaties or fall under the jurisdiction of international tribunals, private actors may incur individual penal responsibility for the commission of such crimes, including, *inter alia*, genocide or torture. 73/

39. Together with article 1 common to the four Geneva Conventions, mandating contracting parties to respect and to ensure respect for the Conventions in all circumstances, the only other provision in these instruments that directly governs all internal armed conflicts is article 3, also common to the four Conventions (hereinafter, common article 3). Common article 3 binds both parties to the conflict, i.e. Government and dissident forces. It does not apply to mere acts of banditry or unorganized and short-lived rebellions but typically to armed strife between governmental armed forces and organized, armed dissidents generally occurring within the territory of a particular State. 74/ It also applies to cases in which two or more armed factions within a country confront one another without the involvement of governmental forces, for example, when the established Government has dissolved or is too weak to intervene. 75/ The application of common article 3 is automatic as soon as a situation of armed conflict exists. It imposes legal obligations on the parties to an internal conflict for the protection of persons who do not, or who no longer, take an active part in the hostilities.

40. Common article 3 reads as follows:

> "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> "1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> "To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> "(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> "(b) Taking of hostages;
>
> "(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> "(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
>
> "2. The wounded and sick shall be collected and cared for.
>
> "An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
>
> "The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
>
> "The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

The obligation to apply common article 3 is absolute for every party to the conflict and independent of the obligation of the other party. Accordingly, individual civilians, including those forcibly or voluntarily displaced by virtue of the hostilities, are entitled to the absolute guarantees of common article 3 when they are captured by or subjected to the power of either government or dissident forces. In addition, common article 3, by inference, and customary law, prohibits displaced persons and other civilians living in combat zones or areas controlled by the enemy from being directly attacked. Deaths of civilians resulting from such illicit attacks are tantamount to homicide and cannot be legitimately considered to be wartime casualties.

41. Protocol II, according to its article 1 (1), applies to non-international armed conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". Because of these objective requirements, the Protocol essentially applies to situations of civil war. Protocol II does not alter common article 3, but rather the two apply collectively and in conjunction with one another.

3. Inter-State armed conflict

42. Inter-State, i.e. international, armed conflict represents a third situation creating internal displacement that receives distinct treatment under international law. Here, human rights law remains applicable during inter-State conflict, 76/ and it becomes especially important to protect internally displaced persons against their own Government where humanitarian law may not afford protection. However, because of the nature of an inter-State conflict, human rights guarantees may become subject to restrictions or even derogations. Non-derogable rights must be respected under all circumstances.

43. In such situations, humanitarian law, notably the Geneva Conventions of 12 August 1949 and Protocol I as well as the customary laws of war, becomes fully operative for States parties in inter-State hostilities which, according to article 2 common to the four Geneva Conventions, involve a declared war, or, in its absence, any conflict between two or more States leading to the intervention of armed forces, including occupation. The armed forces of States engaged in international wars must implement, enforce and comply with all the highly developed rules and protections contained in the 1949 Geneva Conventions, Additional Protocol I (where applicable) and the customary laws of armed conflict.

44. Most norms concerning the protection of civilians in international armed conflicts were designed for non-nationals of the State that effectively holds the power in the respective territory. In this regard, article 4 of the Fourth Geneva Convention, provides in relevant part:

> "Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.
>
> "Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected

> persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are." 77/

Most provisions of the Geneva Conventions, therefore, are not applicable to persons displaced to an area controlled by their own Government. Among the norms which only protect against the authorities of a foreign State (normally an Occupying Power) are many of those provisions which address the needs of displaced persons in the most comprehensive way: thus, Part III, Section III of the Fourth Geneva Convention is limited to persons under foreign occupation, including the particularly important and clear obligation of the Occupying Power to grant passage to humanitarian operations (art. 59).

45. Some provisions contained in Part II of the Fourth Geneva Convention and Part IV of Protocol I have, however, broader applicability. Part II of the Fourth Geneva Convention "cover[s] the whole of the populations of the countries in conflict" (art. 13), and thus also internally displaced persons in the territory controlled by their own Government. It contains provisions for hospital and safety zones and localities (art. 14), neutralized zones (art. 15), for the protection of the wounded, sick, infirm and expectant mothers including provisions concerning hospitals and transports (arts. 16, 18-22) and the "endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas" (art. 17), concerning child welfare (art. 24), the exchange of family news (art. 25) and inquiries made by members of dispersed families (art. 26).

46. Part IV of Protocol I defines a different scope of application than the Fourth Geneva Convention. Concerning the territorial aspect, "[t]he provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted" (art. 49, para 2). With respect to the personal scope of application, Protocol I refers to civilians in general and does not distinguish between nationalities but concentrates on the inoffensive character of the persons to be spared. 78/ Therefore, while not specifically designed for this purpose, almost the whole of Part IV of Protocol I is applicable to internally displaced persons in international conflicts. In this context, the following provisions are particularly important: the prohibition of specific and indiscriminate attacks against civilians (art. 51), the prohibition of starvation of civilians (art. 54, para. 1), the protection of non-defended localities (art. 59) and demilitarized zones (art. 60), the provision of relief to the civilian population (arts. 69-71), the reunion of dispersed families (art. 74), the general fundamental guarantees applicable to everyone (art. 75) and the protection of women (art. 76) and children (arts. 77-78). It has to be noted, however, that only a limited number of States have ratified Protocol I which means that many internally displaced persons cannot benefit from these guarantees.

III. ANALYSIS OF INTERNATIONAL LAW RELEVANT TO THE PROTECTION AND ASSISTANCE NEEDS OF INTERNALLY DISPLACED PERSONS

47. Internally displaced persons all share general protection and assistance needs, including personal safety, personal liberty, subsistence, property, and more. Women and certain vulnerable groups among the internally displaced such as children, the elderly, and the disabled, have specialized protection needs. 79/

A. Equality and non-discrimination

1. Situations of tensions and disturbances, or disasters

48. Essential to the fulfilment of other needs of the internally displaced is the need to be free from discriminatory acts or omissions of others. The concepts of equality before the law, equal protection of the law and non-discrimination form a cornerstone of international human rights law that are enshrined in Articles 1, 13, 55 and 76 of the Charter of the United Nations. Racial, ethnic, religious, gender-specific or political discrimination occurs, in one way or another, in every society. Internally displaced persons, often living in alien surroundings, deprived of their security, property and social status, are particularly exposed and vulnerable to discriminatory treatment.

49. An explicit prohibition of discrimination against internally displaced persons because of their being displaced does not exist in human rights law. However, many international and regional human rights treaties have clauses requiring States parties to respect and ensure the rights and freedoms recognized by those conventions without discrimination. In addition, provisions such as that found in article 26 of the ICCPR guarantee equality before the law and freedom from discrimination in the equal protection of the law in general; article 26 thus "governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction ...". 80/ Although not many of the treaties define "discrimination", the term is commonly understood to imply any distinction, exclusion, restriction or preference which is based on any specified ground, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. 81/ Not every distinction, however, constitutes discrimination but only those that are not based on reasonable and objective criteria. States parties' obligations under these clauses generally encompass protection from discriminatory conduct, 82/ positive action to realize equality, and special measures to remedy patterns of discrimination.

50. Specific grounds upon which discrimination is prohibited in many treaties include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or "other status". 83/ Article 2 of the Universal Declaration states:

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status ...".

Article 7 of the Universal Declaration guarantees:

> "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

51. Among the many treaty law provisions, 84/ the far-reaching guarantee of article 26 of the ICCPR is especially important:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 2 (2) of the ICESCR obliges the States parties to

> "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

52. The term "other status" in these and other instruments was intended to be interpreted broadly. 85/ The term has been interpreted to include nationality and disability, 86/ and reasonably includes youth and old age as well. Non-discrimination clauses thus appear to ban discrimination against internally displaced persons based on their status as such. In addition, such clauses would prohibit discriminatory conduct based on grounds commonly related to situations of displacement, such as race, religion, national or social origin, and lack of property.

53. In addition, all guarantees providing protection against specific categories of discrimination such as race- and gender-specific discrimination are also applicable to internally displaced persons. Relevant instruments include the United Nations Declaration and the International Convention on the Elimination of All Forms of Racial Discrimination, 87/ the Convention against Discrimination in Education, 88/ the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 89/ the Declaration on Race and Racial

Prejudice, 90/ the Declaration on the Elimination of Discrimination against Women 91/ and the Convention on the Elimination of All Forms of Discrimination against Women.

54. The principle of non-discrimination is closely related to that of equality of treatment, which has been interpreted generally to include positive measures that will achieve equality for women and vulnerable groups such as children, the elderly 92/ and disabled. Article 4 (1), of the Women's Convention, for example, states that "temporary special measures aimed at accelerating de facto equality between men and women" are part of the obligations to achieve equality of men and women.

55. The fundamental right to gender equality 93/ is enshrined in Articles 1 (3), 13 (1) (b), 55 (c), and 76 (c) of the Charter and in many human rights instruments, including article 2 of the Universal Declaration, articles 2 (1), 3 and 26 of the ICCPR, and articles 2 (2) and 3 of the ICESCR. Similar rights are found in regional human rights instruments, including article 1 (1) of the American Convention, article II of the American Declaration, article 14 of the European Convention, and articles 2 and 18 (3) of the African Charter.

56. Among internally displaced persons, children are especially vulnerable. Under article 24 of the ICCPR, States parties are required to ensure "every child ... such measures of protection as are required by his status as a minor, on the part of his family, society and the State". Along with ensuring to the child all other rights of the Covenant, this obligation entails the adoption of special measures, including economic, social and cultural measures, to address a child's developmental needs in order to ensure the ability to enjoy civil and political rights. 94/ According to the World Declaration on the Survival, Protection and Development of Children and its Plan of Action, internally displaced children, as children in "very difficult circumstances," require further attention, care and support. 95/

57. Besides women and children, disabled persons also need special protection in situations of displacement as there is a risk that they will suffer from discrimination. Recently, the Committee on Economic, Social and Cultural Rights elaborated on the prohibition against "disability-based discrimination" under article 2 (2) of the ICESCR. 96/ The Committee's General Comment defined such discrimination as including "any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights". 97/ The Committee was especially concerned with women with disabilities who often suffer from "double discrimination" 98/ and children with disabilities. 99/

2. Non-international armed conflict

58. Human rights prohibitions of discrimination and guarantees of equal protection continue to apply in situations of non-international armed conflict. However, special circumstances prevailing in such situations might allow for different treatment which would be considered discrimination in peacetime.

59. International humanitarian law provides for humane treatment without adverse distinction in situations of non-international armed conflict. Article 3 (1) common to the four Geneva Conventions reads:

> "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria."

60. Article 2 (1) of Protocol II provides that its provisions:

> "shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as 'adverse distinction') to all persons affected by an armed conflict as defined in Article 1."

61. Finally, article 4 (1) of Protocol II reads:

> "All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors."

3. Inter-State armed conflict

62. Prohibitions of discrimination in human rights law also apply to situations of inter-State armed conflict although there may be situations allowing for derogation. Further, the principle of humane treatment without adverse distinction is part of humanitarian law applicable in times of armed conflict between States. Thus, article 27, paragraph 3, of the Fourth Geneva Convention states:

> "Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion." 100/

63. Article 75 of Protocol I, which contains an extensive list of fundamental guarantees, provides in paragraph 1 that all

> "persons who are in the power of a Party to the conflict ... shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided in this Article without any adverse distinction based upon race, colour, sex, language,

> religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria ... ."

64. While article 27 of the Fourth Convention is restricted to protected persons, Protocol I affords full protection for internally displaced persons.

4. Conclusions

65. It can be concluded that, in situations of tensions and disturbances, or disasters, internally displaced persons are fully protected by prohibitions of discrimination and guarantees of equal protection. However, an international instrument should explicitly state that the term "other status" in non-discrimination clauses includes the status of internally displaced persons. In addition, fundamental provisions of humanitarian law apply to all civilians and, therefore, afford full protection for internally displaced persons against discriminatory violence. However, it could be useful to state this principle explicitly in a future international instrument relating to the legal status of internally displaced persons.

B. Life and personal security

66. Internally displaced persons frequently are at risk of various acts of violence, which may include, *inter alia*, killings, torture, rape, the use of particularly dangerous weapons and land-mines, and/or forcible disappearance. This section examines the legal norms that are most relevant to internally displaced persons experiencing such dangers during situations of tensions and disturbances, or disasters, non-international armed conflict and inter-State armed conflict.

1. Acts of violence, notably arbitrary and summary executions, genocide, terrorism, indiscriminate attacks, and threats thereof

67. The personal safety of internally displaced persons is often at risk, particularly when they are in transit to and once they are in camps. Most acute are the dangers of individual and mass killings, including genocide and extrajudicial executions, as well as the effects of hostilities, especially from direct and indiscriminate attacks, and acts of terrorism.

(a) Situations of tensions and disturbances, or disasters

68. The right to life is the most fundamental human right. Many of the protection needs of internally displaced persons identified in this report implicate the right to life and therefore should be viewed in conjunction with this right.

69. The right to life is affirmed in article 3 of the Universal Declaration. Article 6 (1) of the ICCPR states that:

> "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Similar provisions are contained in regional instruments, namely, article I of the American Declaration, article 4 (1) of the American Convention, article 2 (1) of the European Convention, and article 4 of the African Charter.

70. As to children in particular, article 6 (1) of the Convention on the Rights of the Child protects their lives while paragraph 2 of the same provision obligates States parties to "ensure to the maximum extent possible the survival and development of the child". Article 19 of the Convention requires States to

> "take all appropriate ... measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment ... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

This obligation to take positive action is especially important in situations of internal displacement because children are often separated from their parents and taken care of by other persons.

71. Most of the mentioned human rights treaties do allow for certain forms of taking of life (e.g. in the form of the death penalty or in defence of unlawful violence 101/), but arbitrary deprivation of the right to life is never allowed. The Human Rights Committee, for example, has held that the use of force by law enforcement officials which is in excess of the principles of necessity and proportionality constitutes a violation of the right to life. 102/ The Committee also considers that, in protecting against arbitrary deprivation of life, "States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. ... Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities." 103/ With regard to loss of life from war and other acts of mass violence, the Committee has stated that "States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life." 104/ In addition, according to the Committee, the protection of the right to life requires that States adopt positive measures such as steps to reduce infant mortality and eliminate malnutrition and epidemics. 105/ Furthermore, CEDAW has noted that violence against women impairs or nullifies the enjoyment by women in particular of, *inter alia*, the right to life. 106/

72. According to article 4 (2) of the ICCPR, article 15 (2) of the European Convention and article 27 (2) of the American Convention, derogations from the right to life are never permitted, not even in times of public emergency which threaten the life of the nation. Therefore, the prohibition of arbitrary taking of life belongs to the non-derogable rights and thus protects internally displaced persons, even in the most extreme cases. 107/

73. During recent years, internally displaced persons along with others have become victims of genocide in at least two situations (former Yugoslavia and Rwanda). Genocide constitutes an especially grave form of violation of the

right to life. Article I of the Genocide Convention declares genocide, committed at any time, to be an international crime. 108/ Article II of the Genocide Convention defines genocide as

> "... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:
>
> "(a) Killing members of the group;
>
> "(b) Causing serious bodily or mental harm to members of the group;
>
> "(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> "(d) Imposing measures intended to prevent births within the group;
>
> "(e) Forcibly transferring children of the group to another group."

74. In this regard, the Vienna Declaration and Programme of Action expressed the dismay of the World Conference on Human Rights "at massive violations of human rights especially in the form of genocide, 'ethnic cleansing' and systematic rape of women in war situations, creating mass exodus of refugees and *displaced persons*" and reiterated "the call that perpetrators of such crimes be punished ... ." 109/

75. Regarding refugees, the Executive Committee of UNHCR (ExCom) has expressed concerns and called for States as well as UNHCR to take measures to address the personal security needs of refugees, many of which focus on the particular needs of women and children refugees. 110/ The agency, itself, has taken strides to reform policies and programmes to improve the personal safety of refugees and, in particular, women and children. 111/ While not directly applicable to internally displaced persons, ExCom Conclusions and UNHCR guidelines may provide guidance for affording security to internally displaced persons.

(b) Non-international armed conflict

76. As discussed above, the right to life is made non-derogable in all human rights treaties, applicable to all persons at all times. Additionally, under humanitarian law, common article 3 sets forth minimum standards of treatment applicable to all persons who do not or no longer actively participate in hostilities. It prohibits the parties to internal armed conflicts from committing acts of "violence to life and person, in particular murder of all kinds," (para. (1) (a)). Paragraph (1) (d) prohibits summary executions, i.e.:

> "The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

77. Common article 3 does not explicitly prohibit attacks against civilian populations in non-international armed conflicts. 112/ Such attacks are, however, prohibited by customary law, in particular, as reflected in United Nations General Assembly resolution 2444 (XXIII), entitled "Respect for human rights in armed conflict". 113/ Resolution 2444 (XIII) expressly recognizes the customary principle of civilian immunity and its complementary principle requiring warring parties to distinguish civilians from combatants at all times. The preamble to this resolution clearly states that these fundamental humanitarian law principles apply "in all armed conflicts," meaning both international and internal armed conflicts. Moreover, the ICRC has long regarded these principles as basic rules of the laws of war that apply in all armed conflicts. 114/ Therefore, the customary principles of civilian immunity and of distinction between civilians and combatants must be adhered to in an internal armed conflict. 115/

78. Accordingly, during internal armed conflicts, civilians who are internally displaced must not - individually or collectively - be made the object of attack. However, if displaced civilians directly participate in the hostilities, they forfeit their immunity from direct attack for as long as they assume the role of a combatant. Once they are captured, surrender or are placed *hors de combat*, they, like other civilians, are absolutely entitled to the guarantees of humane treatment without adverse distinction under common article 3.

79. In contrast, if the displaced, individually or as a group, provide only indirect support to a party to the conflict by, *inter alia*, supplying food or shelter, serving as messengers, or disseminating propaganda, they may not be subject to direct individualized attack since they pose no immediate threat to the adversary. However, if internally displaced civilians are present in or near military targets, they implicitly assume the risk of death or injury incidental to direct, proportional attacks against such military targets. 116/

80. Article 4 of Protocol II elaborates the fundamental guarantees of humane treatment of common article 3. Its non-derogable provisions apply to all persons, including displaced persons, who do not or no longer actively participate in the hostilities. Article 4 (2) (a) of Protocol II explicitly prohibits "violence to the life, health and physical or mental well-being of persons, in particular murder". Furthermore, acts of terrorism 117/ are prohibited in paragraph (2) (d), and threats to commit any of the above acts are prohibited in paragraph (2) (h). Consequently, threats to kill or to commit summary executions are likewise prohibited.

81. According to article 13 (1) of Protocol II, the civilian population and individual civilians enjoy general protection against the dangers arising from military operations. While article 13 of Protocol II affords civilians general protection against attacks, it does not provide for express

protection against indiscriminate or disproportionate attacks. Nevertheless, it has been stated that "the concept of general protection ... is broad enough to cover protections which flow as necessary inferences from other provisions of Protocol II". 118/ The more specific rules in Protocol I that protect civilians from such attacks are appropriate referents for determining the extent of similar protection for these persons under Protocol II. 119/

82. Article 17 (1) of Protocol II refers directly to the security of displaced persons by providing that, exceptionally, displacements may be carried out when "the security of the civilians involved or imperative military reasons so demand". In such cases there is an obligation to take "all possible measures" for a reception of the displaced under satisfactory conditions of, *inter alia*, "safety". With the word "safety", the drafters of Protocol II wanted "to preclude the location of ... camps in the vicinity of military objectives where they would be exposed to the effects of attacks". 120/

83. Concerning refugees, the Executive Committee of UNHCR has noted its concern regarding military and armed attacks on refugee camps and settlements. 121/ In 1987, this concern led to an Executive Committee Conclusion dealing specifically with the protection issue, condemning "all violations of the rights and safety of refugees and asylum-seekers and in particular military or armed attacks on refugee camps and settlements". The Conclusion also sets forth guiding considerations concerning the protection of such camps and resettlements. 122/ These recommendations may serve as a model for an international instrument for internally displaced persons as, in this regard, internally displaced persons in camps or settlements have the same needs as refugees who have crossed international frontiers.

(c) Inter-State armed conflict

84. Internally displaced civilians who fall into the hands of the adversary during an inter-State conflict will be, in most cases, protected persons 123/ and are therefore entitled to the protections set forth in article 32 of the Fourth Geneva Convention which prohibits the parties to the conflict

> "... from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents".

Furthermore, article 27 of the Fourth Convention requires that protected persons "shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof".

85. If, under the circumstances, the internally displaced are not protected persons within the meaning of article 4 of the Fourth Convention, 124/ they none the less must be accorded the minimum guarantees of article 75 of

Protocol I, 125/ which prohibits violence and threats of violence to the life, health, or physical or mental well-being of persons, in particular murder (art. 75 (2) (a) (i) and (e)).

86. The protection of civilians against direct and indiscriminate attacks is contained in article 51 of Protocol I. This provision reads in pertinent part:

> "2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
>
> "3. Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.
>
> "4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
>
> "(a) Those which are not directed at a specific military objective;
>
> "(b) Those which employ a method or means of combat which cannot be directed at a specific military objective; or
>
> "(c) Those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.
>
> "5. Among others, the following types of attacks are to be considered as indiscriminate:
>
> "(a) An attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
>
> "(b) An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
>
> "6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

> "7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations."

This provision, together with others which prohibit making civilians and civilian objects the target of attack, should preclude the creation of so-called "free fire zones" in which all living things are indiscriminately attacked.

87. Wilful killings of protected persons are typified as grave breaches under article 147 of the Fourth Geneva Convention, which subjects the perpetrators to prosecution under universal jurisdiction. In addition, under article 85 of Protocol I, wilful violations of the above-cited provisions of article 51, resulting in death or serious injury, constitute grave breaches.

(d) Conclusions

88. It can be concluded that internally displaced persons are adequately protected by international law against violations of their rights to life and security. The gaps of the Fourth Geneva Convention created by the narrow notion of "protected persons" is filled, to a large extent, by Protocol I and by non-derogable human rights law. Frequent violations of these rights of the displaced are not due to legal gaps but shortcomings in the effective implementation of existing norms. However, it would be useful to include a provision in a future international instrument that internally displaced persons must be protected against indiscriminate or disproportionate attacks and that military or armed attacks on camps and settlements of such persons are prohibited. In addition, given the extensive use of "free fire zones" and their inherently illegal character, any international instrument applicable to the internally displaced should absolutely prohibit the creation of such zones in all armed conflicts.

2. Enforced disappearances

89. One of the risks facing internally displaced persons, whether they are adults or children, is enforced or involuntary disappearance caused by government, paramilitary or dissident forces or groups. Some persons reported to have disappeared have subsequently reappeared as conscripts in governmental or dissident forces. 126/

(a) Situations of tensions and disturbances, or disasters

90. Although there is no explicit proscription of enforced disappearance in any general human rights convention, universal or regional, the practice of disappearances violates many fundamental rights recognized within those general instruments. Such rights include those relating to killings and other acts of violence and ill-treatment as well as those relating to personal liberty and the exercise of one's legal rights.

91. In recent years, a particular consensus against the practice of disappearance has been articulated by the international community. In 1992, the United Nations General Assembly adopted by consensus the Declaration on the Protection of All Persons from Enforced Disappearance. 127/ Article 1 considers any act of enforced disappearance an offence to human dignity, and condemns it

> "as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field".

The third preambular paragraph describes forced disappearance as a situation in which

> "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law".

92. The Inter-American Convention on the Forced Disappearance of Persons, 128/ adopted in June 1994, now prohibits disappearances at any time. Article I provides, in this respect, that "States parties ... undertake ... [n]ot to practise, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees." The Convention extends liability to State actors or agents, as well as persons or groups who act "with the authorization, support, or acquiescence of the State". Under article I (b), States parties undertake to "punish within their jurisdiction those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories". Article IV of the Convention deals with matters of jurisdiction. The defence of due obedience to superior orders or instructions that stipulate, authorize, or encourage forced disappearance is not admitted. 129/ Previously, the Organization of American States (hereinafter OAS) had declared the systematic practice of forced disappearances to be a crime against humanity. 130/

93. The right to be free from disappearances is likewise reflected in section II, paragraph 62, of the Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights which "reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators".

94. Furthermore, article 35 of the Convention on the Rights of the Child addresses the abduction of children in requiring States parties to take "all appropriate national, bilateral and multilateral measures to prevent the abduction of ... children for any purpose or in any form".

95. In the case of Manfredo Velásquez Rodríguez, the Inter-American Court of Human Rights found Honduras responsible for the involuntary disappearance of Manfredo Velásquez Rodríguez despite the absence of an express proscription of involuntary disappearances in the American Convention. 131/ In a similar vein, the Human Rights Committee has condemned the practice of forced disappearance in relation to the obligation of States to guarantee the right to life recognized in article 6 (1) of the ICCPR. The Committee stated that "States parties should ... take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life." 132/ In the case of Rafael Mojica, the Committee reaffirmed this view and concluded that the disappearance of Mr. Mojica constituted a violation of article 6 (1) of the Covenant. 133/ The Committee also held that by failing "to ensure Rafael Mojica's right to liberty and security of person" the Government concerned also violated article 9 (1) of the Covenant. 134/ Finally the Committee stressed that "[a]ware of the nature of enforced or involuntary disappearances in many countries, [it] feels confident to conclude that the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7" 135/ prohibiting torture and cruel, inhuman or degrading treatment.

96. Concerning an obligation to search for disappeared persons, article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance provides for an effective investigation into the fate of disappeared persons by a competent and independent State authority. According to article X (1) of the Inter-American Convention on the Forced Disappearance of Persons, even in times "of war, the threat of war, internal political instability, or any other public emergency ... the right to expeditious and effective judicial procedures and recourse shall be retained as a means of determining the whereabouts ... of a person who has been deprived of freedom ...".

(b) Non-international armed conflict

97. Neither common article 3 nor Protocol II contains an explicit prohibition of the practice of enforced disappearances. Protection against disappearances must therefore be inferred from other established and non-derogable guarantees within the aforementioned instruments. In the case of an internal armed conflict, these guarantees are the prohibitions of violence to life and person, outrages upon personal dignity, and the passing of sentences and carrying out of executions without due process (common art. 3), as well as those provisions dealing with humane treatment contained in articles 4, 5 and 6 of Protocol II.

(b) Inter-State armed conflict

98. The Fourth Geneva Convention and Protocol I contain no explicit prohibition of the practice of forced disappearances. Therefore, protection against such practices during inter-State armed conflict must, for protected persons, be inferred from the requirements of humane treatment and protection against all acts of violence and threats thereof (arts. 27 and 32 of the Fourth Convention). Further protection against forced disappearances can be derived from article 75 of Protocol I, which sets forth fundamental guarantees for the protection of "persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol". Article 147 of the Fourth Geneva Convention typifies the "unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial" as a grave breach, subjecting the perpetrator to universal jurisdiction. Article 85 of Protocol I makes such acts grave breaches of the Protocol. 136/

(d) Conclusions

99. In accordance with the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, internally displaced persons are, to the same extent as other persons, protected against this practice. Although the Declaration is not binding under international law, it is based on and reflects, to a large extent, customary law as well as the case law of the Inter-American Court of Human Rights and the United Nations Human Rights Committee. The Declaration, however, only applies to acts of enforced disappearances perpetrated by or on behalf of State agents.

100. The Inter-American Convention on the Forced Disappearance of Persons does not apply to certain situations of inter-State armed conflict. Although the United Nations Declaration does not contain a similar provision, the methods of work of the Working Group on Enforced or Involuntary Disappearances rule out any action to be taken in a situation of inter-State armed conflict. Therefore, even typical situations of enforced disappearances cannot be addressed if they are directly related to such an armed conflict. 137/

101. Because of the lack of explicit rules and precedents in international law regarding disappearances in situations of armed conflict, a future international instrument should stress that internally displaced persons be protected against disappearances committed by any of the parties to an armed conflict.

3. Missing and dead persons

102. In the event that displaced persons die or are missing as a result of a disaster or any kind of violence other than enforced disappearances 138/ or hostility, the authorities should search, and, when possible, account for missing persons; and, when possible, they should dispose of the remains of the dead in a dignified manner.

(a) Situations of tensions and disturbances, or disasters

103. There is no specific human rights norm requiring State agents to search for missing persons 139/ or to locate and appropriately dispose of the bodies of casualties attendant to a situation of internal tensions and disturbances, or a disaster. However, in virtually all countries, domestic laws for the protection of public health require the authorities to collect and dispose of the remains of persons killed under these circumstances.

(b) Non-international armed conflict

104. Neither common article 3 nor Protocol II contains provisions imposing a duty on the contending parties to search for missing persons. However, article 8 of Protocol II imposes a duty to search for and prevent the despoiling of the dead, as well as an obligation to decently dispose of them.

(c) Inter-State armed conflict

105. Article 16 of the Fourth Geneva Convention requires each party to the conflict, as far as military considerations permit, to facilitate the steps taken to search for the dead and to protect them against pillage and ill-treatment. This article covers not just protected persons, but the entire civilian populations of the warring countries.

106. The Fourth Convention contains no provision requiring a search for missing persons. In contrast, Section III of Part II of Protocol I, which includes articles 32-34, deals exclusively with the missing and the dead, and recognizes that families have a right to know the fate of their relatives (art. 32). 140/ But, this section apparently does not apply as between a party and its own nationals. 141/ Article 33 of Protocol I requires that "[a]s soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party". Furthermore, the other provisions of article 33 on the gathering and recording of information concerning missing persons do not cover internally displaced persons who are a party's own nationals.

107. Similarly, article 34 of Protocol I, requiring the burial of casualties, excludes from its application those deceased who are nationals of the country in which they have died as a result of hostilities. However, the Occupying Power is responsible for the burial of all civilian casualties, including internally displaced persons who are nationals of the occupied State and are killed during hostilities after the establishment of the occupation.

(d) Conclusions

108. To bridge these gaps, a future international instrument should explicitly provide, in all circumstances, for the search and gathering of information concerning any missing internally displaced persons, and for the search and respectful burial of those who have been killed.

4. The use of land mines and like devices

109. Land-mines pose two significant dangers, particularly to civilians (including internally displaced persons) both during and after the conclusion of hostilities. First, a party to the conflict might place land mines in an area populated by displaced civilians. Second, land-mines constitute a continuing threat to non-combatants if they are not removed or do not self-destruct but instead remain active and in place after their military purpose has ceased. Such mines are "blind" weapons and their use is indiscriminate in terms of time and victim. Experience has shown that these indiscriminate weapons present a special danger to internally displaced persons, especially while they are on the run in unfamiliar terrain, relocating to camps, leaving camps for some reason, returning to places of residence, or moving to safe havens.

(a) Situations of tensions and disturbances, or disasters

110. The use of land-mines and like devices is very unlikely during situations of tensions and disturbances, or disasters, unless the former is a sequel to or associated with ongoing hostilities. However, if State agents deployed such weapons indiscriminately during situations falling short of armed conflict resulting in death of or injury to civilians, the use of such weapons would violate the provisions of applicable human rights instruments guaranteeing, among other rights, the rights to life, physical and mental health, and freedom from cruel, inhuman and degrading treatment.

(b) Non-international armed conflict

111. The principal source of international law rules governing the use of land-mines and comparable explosive devices is the Land-Mines Protocol which is annexed to the United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects 142/ (Weapons Convention). Article 1 of the Weapons Convention declares the Convention and its Protocols to be applicable to international armed conflict and a limited class of wars of national liberation. However, the Convention's Preamble 143/ and the de Martens clause 144/ reaffirm the relevance of customary law principles applicable during all armed conflicts. Moreover, the Land-Mines Protocol also embodies, reaffirms, or implements these same customary law principles applicable to all armed conflicts. 145/ Unlike other international agreements that limit the use of specific conventional weapons for the protection of both combatants and civilians, the Land-Mines Protocol essentially seeks to protect civilians from the dangers of land-mine warfare. 146/

(c) Inter-State armed conflict

112. States parties to the Land-Mines Protocol are fully bound by its provisions in the conduct of inter-State hostilities. Moreover, during warfare, non-signing States should respect those provisions in the Land-Mines Protocol which incorporate, clarify or reinforce customary rules reflected in other applicable humanitarian law instruments.

(d) Conclusions

113. A future international instrument applicable to the internally displaced should take into account the particular vulnerability of internally displaced persons regarding land-mines and should guarantee the internally displaced absolute protection against land-mines and like devices.

5. Other acts of violence and ill-treatment, including torture 147/

114. Particularly during flight and while relocated in camps, internally displaced persons also run the risk of being subjected to other forms of violence or ill-treatment. Women and girls in particular may be compelled to suffer violence or ill-treatment.

(a) Situations of tensions and disturbances, or disasters

115. The prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute in all situations, ranging from situations of tensions and disturbances, or disasters to non-international and inter-State armed conflict. No restrictions or derogations are allowed under any circumstances. 148/ According to article 5 of the Universal Declaration,

> "(N)o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

This prohibition, which is now generally accepted as customary international law, is replicated, in substantially similar terms, in article 7 of the ICCPR, 149/ article 37 (a) of the Convention on the Rights of the Child, article 5 (2) of the American Convention, article 3 of the European Convention, 150/ and article 5 of the African Charter. The protection against torture is elaborated in the Torture Convention, which makes the commission of an act of torture, defined under that treaty, effectively a universal crime subject to the jurisdiction of States parties. 151/ The Inter-American Convention to Prevent and Punish Torture similarly prohibits torture. 152/

116. Regarding the prohibitions against torture and cruel, inhuman or degrading treatment or punishment found in article 7 of the ICCPR, the Human Rights Committee has emphasized that the article's "aim ... is to protect both the dignity and the physical and mental integrity of the individual," and that the article "allows of no limitation." 153/ The Committee reaffirmed that, "even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force". 154/

117. The notion of torture is defined in article 1 (1) of the Torture Convention 155/ as intentional acts of officials which inflict severe physical or mental pain or suffering for specific purposes (e.g. obtaining information or intimidating or punishing someone). This provision contains a definition of torture that, although not binding for article 7 of the ICCPR 156/ and other instruments, can be drawn upon as an interpretational aid. Inhuman, cruel or degrading treatment and punishment is constituted by acts or omissions which cause suffering not reaching the level of severity

necessary for torture 157/ or lack the element of intentionality or of a certain purpose. 158/ The Human Rights Committee also stressed the duty of the State "to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity". 159/ Therefore, internally displaced persons might be entitled, under article 7 of the ICCPR, to request positive measures by authorities against unlawful acts by non-State actors.

118. Article 10 (1) of the ICCPR recognizes the right of those deprived of their liberty to "be treated with humanity and respect for the inherent dignity of the human person". 160/ The Human Rights Committee has emphasized that this guarantee "applies to anyone deprived of liberty under the laws and authority of the State who is held in prisons, hospitals ... *detention camps* or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held". 161/ The Committee has declared that article 10 (1) "imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the [ICCPR]". 162/ In elaborating on the concept, the Committee has stated that "[t]reating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as ... property, birth or other status". 163/ As discussed above, the reference to "other status", which reflects the term found in article 2 (1) of the ICCPR prohibiting distinctions of any kind, reasonably encompasses the internally displaced. These principles are of paramount importance for internally displaced persons who are detained in camps. 164/

119. Under article 37 (c) of the Convention on the Rights of the Child, "[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age". In addition, under article 24 of the ICCPR, the Human Rights Committee has emphasized that "every possible ... measure should be taken to ... prevent [children] from being subjected to acts of violence and cruel and inhuman treatment." 165/

120. On the regional level, recognition of the right of all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person is found in article 5 (2) of the American Convention. Similarly, the right to have one's physical, mental and moral integrity respected is proclaimed in article 5 (1) of the American Convention, and the right to humane treatment in custody is enshrined in article XXV of the American Declaration. A more general respect for "the integrity of [the]

person", not necessarily tied to deprivation of liberty, is recognized in article 4 of the African Charter which further provides that no one may be arbitrarily deprived of that right.

(b) Non-international armed conflict

121. The human rights prohibitions of torture and cruel or inhuman treatment or punishment are non-derogable and therefore fully applicable in situations of internal armed conflict. In addition, acts of violence generally, and particularly torture, are proscribed in article 3 common to the Geneva Conventions, which prohibits "[v]iolence to life and person, in particular ... mutilation, cruel treatment and torture" as well as "[o]utrages upon personal dignity, in particular humiliating and degrading treatment" (paras. 1 (a) and (c)). In similar terms, article 4 of Protocol II prohibits "violence to the life, health and physical or mental well-being of persons, in particular ... cruel treatment such as torture, mutilation or any form of corporal punishment" (para. 2 (a)), and "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" (para. 2 (e)). 166/ These guarantees protect internally displaced persons whether or not they have been active participants in hostilities.

(c) Inter-State armed conflict

122. During inter-State armed conflict and in addition to human rights law, articles 27 and 32 of the Fourth Convention prohibit acts of violence against and torture of protected persons. Article 75 of Protocol I extends this prohibition to all persons who do not benefit from more favourable treatment under applicable instruments. Accordingly, internally displaced persons, irrespective of their status and the nature of the hostilities, should enjoy absolute protection against such illicit acts. Article 147 of the Fourth Geneva Convention makes the wilful torture or inhuman treatment, including biological experiments, of a protected person a grave breach and subjects the perpetrators to trial and punishment under universal jurisdiction. In addition, article 85 (2) of Protocol I provides that grave breaches of the Convention are, in certain cases, grave breaches of the Protocol. 167/

(d) Conclusions

123. Internally displaced persons are fully protected against torture, cruel and inhuman treatment, and when detained, they are entitled to enjoy the same guarantees as other persons deprived of their liberty.

6. Gender-specific violence

124. Prevalent forms of gender-specific violence 168/ among internally displaced persons, and in particular women, include rape and other sexual attacks and general physical attacks. Increased spousal battering and marital rape manifest the stress of displacement on the family unit. Incidences of sexual abuse of children, especially girls, reportedly occur at higher rates among those children separated from their families.

125. For purposes of this report, gender-specific violence includes any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering on account of one's gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. 169/ The term will cover violence perpetrated by the State, by others in the community, and by family members. Prevalent forms of violence against displaced women include rape and other sexual attacks, general physical attacks, domestic violence, coerced sexual acts in exchange for assistance, exploitation of prostitution and sexual harassment.

126. Although the analysis in this section applies equally to displaced men who suffer rape and other sexual attacks, gender-specific violence affects displaced women disproportionately. 170/ This section identifies a set of norms applicable to certain forms of gender-specific violence most relevant to displaced persons in the contexts of tensions and disturbances, non-international armed conflict, and inter-State armed conflict. It is possible, however, to draw implications for still other types of gender-specific violence from many of the same rights.

(a) Situations of tensions and disturbances, or disasters

127. Violence against women specifically implicates the obligations of States to respect and ensure human rights and fundamental freedoms to all. As articulated by CEDAW, violence against women breaches rights guaranteed under general international law or under human rights treaties. 171/ Gender-specific violence is rooted in gender discrimination, which violates well-established principles of international law. 172/ CEDAW has interpreted the prohibition on gender discrimination, which underlies many of the obligations under the treaty, to forbid various forms of violence against women. 173/ These forms include violence directed against women on the basis of their gender and violence that affects women disproportionately. 174/ The former as well as the present United Nations Special Rapporteur on torture and other United Nations special rapporteurs have categorized rape by State agents as torture. 175/ In interpreting the ICCPR, the Human Rights Committee has stressed that the prohibition against torture and cruel, inhuman or degrading treatment and punishment in article 7 "relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim". 176/ A fair interpretation of the reference to both physical and mental pain could accommodate a wide range of gender-specific violence and threats thereof.

128. Under the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, "States Parties recognize that violence against women prevents and nullifies the exercise of [civil, political, economic, social and cultural] rights". 177/ Failure to protect women against violence impairs or nullifies the enjoyment of the rights to liberty, security, and integrity of person, as well as, in some instances, the right to life. 178/ Gender-specific violence of such nature also violates the rights to be free from torture or cruel, inhuman or degrading treatment. 179/ In addition, such forms of gender-specific violence implicate the right to the highest attainable standard of physical and mental health recognized in article 25 of the Universal Declaration, and

article 12 of the ICESCR. Article XI of the American Declaration and article 11 of the European Social Charter similarly affirm a right to preservation of health. 180/

129. The United Nations Declaration on the Elimination of Violence Against Women affirms that violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms 181/ and that States have responsibilities to eliminate violence against women which include preventing and redressing such violence: The Declaration calls on States to "adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence," a category that encompasses displaced women. 182/ The Inter-American Convention on Violence Against Women similarly provides that "[w]ith respect to the adoption of the measures in this Chapter, the States parties shall take special account of the vulnerability of women to violence by reason of ... their status as ... displaced persons". 183/ Gender-based violence against women and children has also been the focus of various international and regional governmental meetings. 184/

130. Many acts of gender-specific violence, including domestic violence, are carried out by private individuals. Although a State is not directly liable for non-State actors' wrongs, States parties to the ICCPR, the American Convention and the European Convention have assumed an affirmative duty to ensure the treaty rights to all, without gender distinction. 185/ Accordingly, acts by private actors that violate rights to personal integrity give rise to State responsibility under those treaties where the State has failed to establish adequate legal mechanisms to prevent, punish and redress such acts. 186/ In addition, States parties to the Women's Convention assume obligations to work towards eliminating discrimination against women "by any person, organization or enterprise" 187/ and eliminating "prejudices and ... all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". 188/

131. Furthermore, systematic non-enforcement of gender-specific crimes, such as murder and assault in the context of domestic violence, violates the norm of equal protection of the law. 189/ Domestic violence, including marital rape, also impairs the ability to participate in the family fully and equally as guaranteed in article 16 (1) of the Universal Declaration, and article 23 (4) of the ICCPR, article 17 (4) of the American Convention and article 5 of the Seventh Protocol to the European Convention. States parties undertake similar obligations under article 16 (c)-(h) of the Women's Convention.

132. Displaced persons, and in particular women, have been frequently coerced into providing sexual acts in return for essential food, shelter, security, documentation or other forms of assistance. Exploitation of prostitution is also common, especially in situations where resort to prostitution presents one of the only forms of economic support. 190/ Along with the resulting physical and psychological trauma, many victims have become infected with sexually transmitted diseases, including HIV/AIDS. 191/ These forms of gender-specific violence breach many of the human rights and humanitarian law standards discussed previously in the paragraphs on sexual attacks as well as

the right to equality. 192/ Under the Women's Convention, States parties are obligated to take measures to protect women engaged in prostitution or subject to sexual exploitation and report on their effectiveness. 193/

133. Applicable United Nations treaty provisions, including the Women's Convention, create the normative framework for the policies and operations of UNHCR in its efforts to combat gender-specific violence and assist refugee victims. 194/ Both the High Commissioner's Office and the Executive Committee have urged States to implement relevant national laws in compliance with international legal standards, including non-discriminatory prosecution of gender-specific crimes and application of the United Nations Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners. 195/ Acts of gender-specific violence directed against refugee girls and unaccompanied minors has been held to violate articles 19, 24, 34, 37, and 39 of the Convention on the Rights of the Child. 196/

(b) Non-international armed conflict

134. To the extent that gender-specific violence amounts to torture, cruel, inhuman and degrading treatment, the right to be free from gender-specific violence is itself non-derogable. Accordingly, freedom from forms of gender-specific violence that breach non-derogable rights must be guaranteed to displaced persons in all situations, including armed conflict. 197/

135. In the context of non-international armed conflict, common article 3 prohibits "any adverse distinction founded on ... sex" in its guarantee of humane treatment in all circumstances of non-international armed conflict. Protocol II, article 2 (1) bears the same prohibition in the application of that Protocol. Such provisions arguably encompass all gender-specific violence because the core of such conduct is sexual distinction.

136. Although common article 3 does not explicitly reference any particular acts of gender-specific violence, it is arguable that its general prohibitions in article 3 (1) (a) and 3 (1) (c) against "outrages upon personal dignity, in particular humiliating and degrading treatment" and "violence to life and person, in particular ... mutilation, cruel treatment and torture" encompass certain forms of gender-specific violence. In contrast, "rape, enforced prostitution and any form of indecent assault" are explicitly prohibited in article 4 (2) (e) of Protocol II. Since Protocol II elaborates on and clarifies common article 3, its explicit proscription of rape and other kinds of sexual and physical violence should be respected by the parties to all internal armed conflicts.

137. Neither common article 3 nor Protocol II contains enforcement provisions requiring the parties to the conflict to prosecute offenders. However, the Statute of the International Tribunal for Rwanda has recognized that infractions of the non-derogable rules in common article 3 and Protocol II should be regarded as offences against international law entailing the individual criminal responsibility of the perpetrator. 198/ 199/ Article 3 of the Statute explicitly states:

> "The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:
>
> "...
>
> "(g) Rape;".

138. Similarly, the Statute of the International Tribunal for the Former Yugoslavia, states in article 5 on "Crimes against humanity" that

> "The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international *or internal in character*, and directed against any civilian population:
>
> "...
>
> "(g) rape;". 200/

(c) Inter-State armed conflict

139. Article 27 of the Fourth Geneva Convention guarantees equal treatment to all protected persons "[w]ithout prejudice to the provisions relating to their ... sex". 201/ Article 75 (1) of Protocol I accords to non-protected persons the enjoyment of fundamental guarantees without "any adverse distinction based upon ... sex" in its guarantee of humane treatment in all circumstances of international armed conflict subject to Protocol I. Such provisions arguably encompass all forms of gender-specific violence.

140. Rape, forced prostitution and other forms of gender-specific assault and ill-treatment are explicitly prohibited in article 27 of the Fourth Geneva Convention, which extends to protected persons only. Article 76 (1) of Protocol I, which applies to all women in the power of a Party to the conflict, including a Party's own nationals, 202/ guarantees that "[w]omen shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault". Under article 77 (1) of this Protocol, children as well are to be "the object of special respect and ... protected against any form of indecent assault". Article 75 of Protocol I, on which articles 4 to 6 of Protocol II were modelled, protects those persons within its scope from "[o]utrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault". (para. 2 (b)).

141. None of the above-mentioned prohibitions list rape or other gender-specific violence among the grave breaches subject to universal jurisdiction. None the less, violations of article 27 of the Fourth Geneva Convention and, where based on racial discrimination, article 85 of Protocol I, constitute part of customary international law, thus establishing a basis for universal jurisdiction. 203/ In addition, rape has been recognized as a war crime for which military or civilian persons may be

accountable or as a grave breach subject to universal jurisdiction. 204/ Therefore, the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda declare rape as punishable. 205/ ICRC has declared the rape of protected civilians to be encompassed in the grave breach of "wilfully causing great suffering or serious injury to body or health" under article 147 of the Fourth Geneva Convention. 206/ Similar rationales support an interpretation that rape and similar gender-specific violence - at least in certain circumstances - are encompassed in the grave breach of "torture or inhuman treatment" under article 147. 207/

(d) Conclusions

142. Although it can be concluded that present international law, in principle, affords adequate protection from gender-specific violence against internally displaced persons, many of these guarantees, especially their bearing on internally displaced persons, need to be highlighted and further detailed in a future international instrument.

C. Personal liberty

143. The personal liberty of internally displaced persons is often at risk, both during flight and upon relocation in camps. Frequently, displaced persons are confined in judicial or administrative detention in prison or in a camp for displaced persons. In some cases, displaced persons are subject to hostage-taking, forcible recruitment, and abduction into slavery-like practices. This section examines the legal standards that are most pertinent to internally displaced persons in situations of tensions and disturbances, non-international armed conflict, and inter-State armed conflict.

1. Detention and habeas corpus

144. Internally displaced persons face arrest and detention, often without judicial warrant or other legal safeguards, and sometimes as a means of collective punishment. Relocation frequently involves internment in a compound or camp with no freedom to leave. In some circumstances, alleged misconduct inside a camp can result in administrative segregation in a separate cell or building within or outside the camp, often without the accused being informed of the charges or duration of the disciplinary period, and without being given an opportunity to challenge the legality of the detention. Moreover, in some cases, internally displaced persons are considered to be part of the political opposition or counter-insurgency simply because they are on the run, have left their homes, or have been detained by warring forces in a situation of armed conflict.

(a) Situations of tensions and disturbances, or disasters

145. The right of everyone to be free from arbitrary arrest or detention is recognized under article 9 of the Universal Declaration and article 9 (1) of the ICCPR. The latter article provides that

> "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." 208/

146. Article 37 (b) of the Convention on the Rights of the Child further provides that "[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".

147. On a regional level, the right to liberty and security of person is guaranteed in article 7 (1) of the American Convention, article I of the American Declaration, article 5 (1) of the European Convention, and article 6 of the African Charter.

148. The right to one's liberty may be restricted on limited grounds 209/ and is derogable under the previously cited instruments that contain derogation clauses. None the less, the term "arbitrary arrest or detention" has consistently been interpreted broadly to prohibit both arrest or detention that is not in accordance with domestic law, and arrest or detention that is incompatible with international standards respecting liberty and security of the person, even if it is in accordance with domestic law. 210/ Those international standards include, *inter alia*, safeguards listed within article 9 (2) through 9 (5) of the ICCPR such as the right to be informed, at the time of the arrest, of the reasons for the arrest and to be promptly informed of the charges; the right to be brought promptly before a judge; the right to trial 211/ within a reasonable time or to release; the right to take proceedings before a court to have the lawfulness of the detention reviewed; and the right to compensation in the case of an unlawful arrest or detention. 212/ Similar safeguards exist at the regional level in, *inter alia*, article 7 (4) to 7 (7) of the American Convention, article XXV of the American Declaration, article 5 of the European Convention, and article 7 of the African Charter.

149. The right to an effective remedy enables one to challenge the legality of one's detention and, as such, is considered essential. That right is guaranteed in article 8 of the Universal Declaration and article 9 (3) and 9 (4) of the ICCPR. On the regional level, the right to a remedy is recognized in article 7 of the American Convention, article 5 (4) of the European Convention, and articles 6 and 7 of the African Charter.

150. The question of whether detention in closed camps 213/ is permissible is especially relevant for internally displaced persons. Although there are no precedents on this issue, the act of holding someone in a closed camp constitutes detention under article 9 (1) of the ICCPR. The Human Rights Committee has stressed "that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.". 214/

151. Under article 9 (1) of the ICCPR, detention in a closed camp is only permissible if it is imposed "on such grounds and in accordance with such procedure as are established" by domestic legislation. Therefore, without a legal basis, internally displaced persons cannot be confined to a closed camp. In addition, such detention must not be "arbitrary", meaning that it has to be reasonable and necessary in all circumstances. 215/ Thus, while certain restrictions of the liberty of internally displaced persons in the interest of their own security or for imperative public necessities are admissible in exceptional cases, these restrictions should be kept as minimal as possible. Often, measures such as check-points or curfews will be sufficient.

152. Regional law might be more restrictive. Article 5 (1) (a) to (f) of the European Convention contains an exhaustive list of grounds for lawful detention. None of these provisions, however, allow the detention of someone because he or she is displaced. Letter (f) covers detention which is aimed at the prevention of illegal immigration or at the preparation of deportation or extradition: while asylum-seekers and even refugees may be detained under letter (f), the detention of internally displaced persons would be unlawful as such persons are most often nationals of the country concerned which will not expel or extradite them.

153. When developing an instrument on the detention of internally displaced persons, UNHCR guidelines might serve as a source of inspiration. ExCom Conclusion 44 (XXXVII) on the detention of refugees and asylum-seekers states "that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity ... or to protect national security or public order". 216/ Furthermore, UNHCR adopted a policy against detention of refugee children although it acknowledges exceptions as provided in the Convention on the Rights of the Child quoted above, for detention as a last resort and for the shortest time possible. 217/ The Executive Committee of UNHCR has condemned the arbitrary detention of refugee children. 218/

(b) Non-international armed conflict

154. The right to one's liberty might be derogated from in situations of non-international armed conflict under human rights instruments that contain derogation clauses. Humanitarian law applicable to non-international armed conflicts contains no standards concerning when persons may be detained, interned or otherwise deprived of liberty and how such deprivations of liberty will be reviewed by a court. Other than the general protections, common article 3 does not provide any special protection for persons whose liberty has been restricted. Article 5 of Protocol II provides a regime for the treatment of persons who are "deprived of their liberty for reasons related to the armed conflict" and, thus, implicitly allows for the internment or even detention of internally displaced persons.

(c) Inter-State armed conflict

155. The Fourth Convention provides that aliens who are protected civilians may be interned or placed in assigned housing only if the security of the

Detaining Power absolutely requires such a step (art. 42). 219/ Persons interned or placed in assigned residences are entitled to a periodic review of such decisions by a court or administrative board (art. 43 of the Fourth Convention). The Fourth Convention also contains a complete regime for the treatment of internees (arts. 79-135). In addition, article 75 of Protocol I requires that persons 220/ arrested, detained or interned for actions related to the hostilities be promptly informed of the reasons for the measures and requires that they be released as soon as the circumstances justifying the detention have ceased to exist, unless the detention is for reasons of penal offence. Additional provisions govern the detention of women and children.

(d) Conclusions

156. The right to liberty, habeas corpus and *amparo* also protects internally displaced persons. However, the preconditions of lawful detention of internally displaced persons in closed camps remain unclear. There is a clear gap in international law concerning detention in situations of non-international armed conflict. A future international instrument should address these issues.

2. Hostage-taking and shielding

157. In situations of internal tensions and disturbances and particularly during armed conflict, internally displaced persons may be at risk of being taken hostage by either State agents or various private actors. They may also be used as human "shields" to protect troops or other military objects against attack.

(a) Situations of tensions and disturbances, or disasters

158. Although there is no express provision in general human rights treaties prohibiting hostage-taking, such practices, if perpetrated by State actors, violate established human rights guarantees, including those concerning personal liberty and the right to life. 221/ The international community has expressed consensus on the seriousness of hostage-taking by adopting the International Convention against the Taking of Hostages 222/ (Hostage Taking Convention); however, the Convention is only applicable to international cases. 223/

159. No human rights instrument explicitly prohibits the use of persons as human "shields", e.g. to protect objects or police stations from terrorist attacks. It can be argued, however, that such actions constitute cruel and inhuman or degrading treatment and affect the right to life.

(b) Non-international armed conflict

160. In addition to the human rights provisions noted above, common article 3 and article 4 (2) (c) of Protocol II expressly prohibit acts of hostage-taking and thus provide sufficient protection to internally displaced persons.

161. There is, however, no provision prohibiting the practice of using internally displaced persons as human "shields", e.g. to protect military installations, although such actions constitute cruel treatment or violence to the physical or mental well-being of persons as prohibited in these articles.

(c) Inter-State armed conflict

162. During inter-State armed conflicts, hostage-taking is expressly prohibited by article 34 of the Fourth Geneva Convention. This prohibition applies to internally displaced persons who are protected persons under this Convention. If they do not qualify as such, internally displaced persons are nevertheless similarly protected against hostage-taking by article 75 (2) (c) of Protocol I. Both instruments classify violations of the prohibition against the taking of certain persons as hostages as grave breaches, thereby creating a duty on States to prosecute or extradite the offenders (art. 147 of the Fourth Convention and art. 85 of Protocol I). 224/

163. Article 28 of the Fourth Geneva Convention stipulates that "[t]he presence of a protected person may not be used to render certain points of areas immune from military operations". This provision can be read as prohibiting the use of internally displaced persons as human "shields" if they are protected persons in the sense of the Geneva Conventions. Article 51 (7) of Protocol I explicitly prohibits to use

> "The presence or movements of the civilian population or individual civilians ... to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations."

(d) Conclusions

164. Present international law provides adequate protection against acts of hostage-taking. Shielding is clearly prohibited in inter-State armed conflicts; but, in other situations, the legal situation is less clear. Taking into account the experiences of the Representative, 225/ it would be appropriate to address the issue of using internally displaced persons as human "shields" in a draft international instrument.

3. Forcible recruitment

165. Among the many dangers facing internally displaced persons, both adults and children, is forcible and involuntary recruitment into the country's armed forces or into those of dissident groups. Such recruitment may also manifest itself in government coercion to form civil defence patrols. In situations of armed conflict, persons subject to forcible recruitment may be required to take part in hostilities.

(a) Situations of tensions and disturbances, or disasters

166. Article 38 (3) of the Convention on the Rights of the Child requires States parties to refrain from recruiting into their armed forces children who are not yet 15 years old, whereas "[i]n recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States parties shall endeavour to give priority to those who are oldest." 226/ Although article 8 (3) (c) (ii) of the ICCPR allows States to oblige their citizens to perform a "service of a military character", the Human Rights Committee has recognized that under article 26 of the ICCPR, States must ensure that access for conscientious objectors to a national service, which is required by law, is granted in a non-discriminatory way. 227/ Furthermore, conscription practices that amount to cruel, inhuman or degrading treatment in order to compel compliance or punish non-compliance with conscription are prohibited in all circumstances by applicable rules of human rights law. Finally, human rights law prohibits discriminatory conscription practices, e.g., singling out internally displaced persons because of their being displaced. 228/

(b) Non-international armed conflict

167. In addition to the above, in situations of non-international armed conflict, the proscription of cruel, inhuman and degrading treatment in common article 3 arguably prohibits recruitment practices that transgress this injunction. Furthermore, in internal armed conflicts governed by Protocol II, article 4 (3) (c) of the Protocol prohibits both the Government and dissidents from conscripting children under the age of 15 into their armed forces or permitting them to participate in hostilities.

168. States parties to the Convention on the Rights of the Child undertake, according to article 38 (1), "to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child." Furthermore, States parties are required to take "all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities" (art. 38 (2)). These obligations form the basis of UNHCR's guidelines on forcible recruitment of refugee children, a practice which particularly afflicts unaccompanied minors. 229/

169. The ability of dissident groups to forcibly recruit or conscript civilians during internal armed conflicts is nowhere expressly recognized in any humanitarian law instruments. Such deprivations of individual liberty clearly constitute violations of domestic law.

(c) Inter-State armed conflict

170. Article 51, first paragraph, of the Fourth Geneva Convention prohibits an Occupying Power from compelling protected persons to serve in its armed or auxiliary forces. Likewise, the second paragraph of this article, *inter alia*, protects protected persons from being compelled to "undertake any work which would involve them in the obligation of taking part in military operations." Article 77 (2) of Protocol I requires each party to the conflict to take "all feasible measures" in order that children younger than 15 years

do not directly participate in hostilities; in particular, this article prohibits each party to the conflict from conscripting children under the age of 15 into their armed forces. It further requires that if children between the ages of 15 and 18 are to be recruited, efforts should be made to recruit the oldest ones first. This language is similar to that of article 38 of the Convention on the Rights of the Child which remains applicable during international armed conflict as well.

(d) Conclusions

171. With respect to the main needs of internally displaced children, present international law affords clear protection. However, taking into account the special vulnerability of these children, a future international instrument which could be inspired by UNHCR's guidelines on forcible recruitment of refugee children should address the prohibition of recruiting children into armed forces of any of the parties to a conflict. Regarding adults, international law currently contains no explicit guarantee generally applicable to adults in cases of forcible recruitment by parties to any kind of armed conflict. As internally displaced adults are especially vulnerable to discriminatory proscription practices, their special needs should be also addressed by a future instrument.

4. Contemporary forms of slavery

172. Despite its international proscription, slavery-like practices have not yet been eradicated and, in some places, internally displaced persons may be more exposed to such illicit practices because of their being displaced. At times, slavery and slavery-like practices affecting the internally displaced manifest themselves in such contemporary forms as sale into marriage, sexual exploitation of women, and forced labour of unaccompanied minors.

(a) Situations of tensions and disturbances, or disasters

173. Under various general human rights treaties, freedom from slavery and slavery-like practices is explicitly guaranteed in all situations and under all circumstances. 230/ Consequently, restrictions on and derogations 231/ from this freedom are not permitted. The 1926 Slavery Convention with its Protocol 232/ and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery Convention 233/ set forth absolute rights of human beings to be free from slavery and similar practices and allow for no reservations.

174. Article 6 of the Women's Convention prohibits trafficking in women and exploitation of prostitution. Sale into marriage and forced marriage violate the right to be free from slavery and slavery-like practices also if, in particular, internally displaced women are affected. Article 1 (c) of the Supplementary Slavery Convention prohibits any institution or practice where a woman is sold into marriage, where her husband has the right to sell her, or where she can be inherited by another person on her husband's death. In addition, such practices are prohibited under provisions recognizing the right to freely enter into or consent to marriage, including article 16 (2)

of the Universal Declaration, article 23 (3) of the ICCPR, and article 16 (1) (b) of the Women's Convention. A similar provision is found in article 17 of the American Convention.

175. The Convention on the Rights of the Child recognizes protection needs against abuse and neglect (art. 19), child labour (art. 32), sexual exploitation (art. 34), sale and trafficking of children (art. 35), the use of children in the production and distribution of drugs (art. 33), and the right to protection "against all other forms of exploitation prejudicial to any aspects of the child's welfare" (art. 36). 234/ The Committee on the Rights of the Child has recommended that children affected by sale be considered "mainly as a victim" in the formulation of States' measures of prevention and response. 235/ All these provisions are fully applicable to internally displaced children.

176. The Guidelines on Refugee Children, which incorporate United Nations treaty standards, including the Convention on the Rights of the Child, prohibit slavery-like practices, particularly the exploitation and irregular adoption of unaccompanied minors. 236/

(b) Non-international armed conflict

177. The above-mentioned human rights prohibitions of slavery remain applicable in situations of non-international armed conflict. Common article 3 does not explicitly prohibit slavery and slavery-like practices; however, its proscription of "outrages upon personal dignity" (para. 1 (c)) should be considered to embody this prohibition. Article 4 (2) (f) of Protocol II is more explicit, prohibiting "slavery and the slave trade in all their forms."

(c) Inter-State armed conflict

178. No provision in the Fourth Geneva Convention or Protocol I explicitly prohibits slavery. However, the human rights norms mentioned above are non-derogable and must also be respected in times of war. In addition, the allusion to "respect for their person" and the guarantee of humane treatment for protected persons in article 27 of the Fourth Geneva Convention should be considered an implicit protection against such practices. Similarly, the expression "outrages upon personal dignity" in article 75 (2) (b) of Protocol I should be interpreted to prohibit slavery and slavery-like practices in the case of persons who are in the power of a party to the conflict and who do not benefit from more favourable treatment under the Geneva Conventions or Protocol I.

(d) Conclusions

179. In international law, slavery and slavery-like practices are prohibited by absolute and non-derogable guarantees. However, since internally displaced persons, in particular women and children, are vulnerable to such abuses, it would be useful to address the issue in a future international instrument.

D. Subsistence needs

180. Whether resettled in temporary camps or still in transit, internally displaced persons in many cases are deprived of, and/or denied safe access to, one or more of the following essentials for a minimum standard of living: sufficient food, water, housing, clothing, health care and sanitation. Such essentials are necessary for an adequate standard of living. 237/

1. Food, water, clothing and housing

(a) Situations of tensions and disturbances, or disasters

181. The subsistence needs of everyone, including internally displaced persons, involve a variety of rights. For example, article 22 of the Universal Declaration recognizes the right to realization of the "economic, social and cultural rights indispensable for [one's] dignity ... ". Of explicit applicability are provisions which recognize the right to an adequate standard of living for all. Article 25 (1) of the Universal Declaration proclaims the right of everyone to a standard of living that is adequate for the health and well-being of the person and his/her family, which includes, *inter alia*, food, clothing, and housing. Furthermore, article 11 (1) of the ICESCR recognizes

> "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing ... ".

Paragraph 2 of that provision recognizes "the fundamental right of everyone to be free from hunger" 238/ in setting forth measures to be taken to eliminate malnutrition and undernourishment. 239/ Also, article 14 (2) of the Women's Convention provides that States parties must ensure to women in rural areas the right to "enjoy adequate living conditions, particularly in relation to housing, ... electricity and water supply, transport and communications" (subpara. (h)). 240/

182. Various provisions of human rights law recognize the right of children to adequate nutrition. Under the protection provided by article 24 of the ICCPR, children enjoy the right to, *inter alia*, "every possible economic and social measure ... to reduce infant mortality and to eradicate malnutrition among children ...". 241/ According to article 27 of the Convention on the Rights of the Child, every child has the right "to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." Furthermore, States parties to that instrument "in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing" (para. 3). 242/ The international community has indicated repeatedly its commitment to action to assist children in the realization of this right, including the establishment of special corridors of relief for children in time of war. 243/

183. Certain acts involving deprivation of food are prohibited as international crimes in, *inter alia*, article II (c) of the Genocide Convention. 244/ On the regional level, the right to food is recognized in article 12 of the Protocol of San Salvador. 245/

184. The Committee on Economic, Social and Cultural Rights has made clear in its general comments interpreting States' obligations under that treaty that States parties bear a "minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights." 246/ The Committee has stated that a "State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant" unless it can "demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations." 247/ The Committee commented further that, for a State party to attribute its failure to a lack of available resources, it must demonstrate that it has made a maximum effort to use all the resources at its disposal to satisfy the essential needs listed. 248/ Such resources include not only those within a State, but also "those available from the international community through international cooperation and assistance." 249/ Such a statement has been hailed as signifying that all States must provide, at a minimum, subsistence needs to the population under all circumstances. 250/

185. The Human Rights Committee has stated that protection of the right to life requires positive measures, 251/ a phrase which reasonably includes the provision of food and other subsistence aid. In addition, the Committee on Economic, Social and Cultural Rights has elaborated, in particular, on the right to adequate housing derived from the right to an adequate standard of living recognized in article 11 (1) of the ICESCR. In its general comments, the Committee noted that the human right to adequate housing is of central importance to the enjoyment of all economic, social and cultural rights. 252/ The Committee reaffirmed the right to enjoy adequate housing free from any form of discrimination based on, among other factors, status, 253/ and it dismissed a "narrow or restrictive" interpretation of the right in favour of one viewing it as a "right to live somewhere in security, peace and dignity." 254/ Factors to be taken into consideration in determining whether particular forms of shelter can be considered adequate include: legal security of tenure, availability of services, materials, facilities and infrastructure, 255/ affordability, habitability (which includes physical safety of occupants as well as adequate space free from vagaries of weather and threats to health), accessibility (especially to such vulnerable groups as the terminally ill, mentally ill, children, physically disabled, and elderly), location, and cultural adequacy. 256/

186. Refugee law demands that refugees shall be given the same treatment as nationals of the asylum country with regard to public relief and assistance (art. 23 of the Refugee Convention) and any rationing system (art. 20 of the Refugee Convention). As internally displaced persons most often are nationals of the country concerned, these provisions are not directly relevant; however, they are an expression of the principle that persons who

have fled their homes should not be discriminated against in the area of relief and assistance. 257/ The particular needs of women and children refugees, and their rights to equality of treatment regarding access to adequate food and shelter, clean water and firewood, are the subject of detailed guidelines of UNHCR. 258/ States members of the UNHCR Executive Committee have noted the special needs of refugee children for adequate, well-balanced and safe diets. 259/

(b) Non-international armed conflict

187. In times of non-international armed conflicts, the "minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels" of social rights 260/ continues to bind States and to protect internally displaced persons. As already mentioned in this report, the Committee on Economic, Social and Cultural Rights has stressed that a "State party in which any significant number of individuals is deprived of essential foodstuffs, ... basic shelter and housing ... is ... failing to discharge its obligations under the Covenant". 261/ In addition, to a great extent, the right to food relates to the non-derogable right to life which must not be subject to derogation or unjustified restriction under the above-cited instruments, even in situations threatening the life of the nation. 262/

188. In situations of non-international armed conflict, common article 3 provides for the humane treatment of all persons, including internally displaced persons, who do not or no longer take an active part in the hostilities. The rights to food and water are not explicitly mentioned in common article 3, but these rights, to the extent they are necessary for survival, should be regarded as inherent in the guarantee of humane treatment contained in common article 3.

189. Protocol II contains other detailed rules applicable to the displaced and other persons affected by hostilities. Article 14 prohibits starvation of a civilian population as a method of combat. Towards that end, it prohibits the attack, destruction, removal or rendering useless of those objects which are "indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works". 263/ Regarding detained or interned persons, whether military or civilian, 264/ article 5 (1) (b) of Protocol II sets forth some essentials of humane treatment which also apply to internally displaced persons detained or interned in camps. Those guarantees include food, drinking water, and protection against the weather and the dangers of the armed conflict, "to the same extent as the local civilian population". Although housing and clothing are not expressly mentioned, they may be inferred from the "protection against the rigours of the climate and the dangers of the armed conflict". Those rights, however, are not repeated in article 5 (3) of Protocol II, dealing with the humane treatment of persons whose liberty has been restricted in any other way than by detention or internment which, in most cases, will include internally displaced persons. 265/

(c) Inter-State armed conflict

190. As previously noted, a Government should never be allowed to restrict or suspend its obligation to provide internally displaced persons with the essentials needed for their survival. This prohibition is resoundingly articulated in the Geneva Conventions of 1949 and Protocol I. Article 54 (1) of Protocol I prohibits starvation of a civilian population as a method of warfare. 266/ ICRC has interpreted this provision as prohibiting using starvation as "a weapon to annihilate or weaken the population" or "causing the population to suffer hunger, particularly by depriving it of its sources of food or of supplies." 267/

191. Article 54 (2) protects objects which are indispensable to the survival of the civilian population, by prohibiting attacks, destruction, removal or the rendering useless of such objects when these actions are taken for the *specific purpose* of denying their sustenance value to a civilian population. However, that provision does not prohibit the incidental suffering or collateral effects on a civilian population of an otherwise lawful military operation. 268/ Article 54 (3) contains exceptions to these prohibitions. 269/ Nevertheless, the ICRC Commentary narrowly interprets the exceptions by stating that while "some supplies of foodstuffs or drinking water can serve to sustain the armed forces, this possibility does not seem sufficient reason for depriving such objects of ... protection ..." to the detriment of a civilian population. 270/

192. In references that implicitly include displaced persons, article 55 of the Fourth Geneva Convention charges the Occupying Power with the duty of ensuring the food supplies of the population. It specifically states that it should provide for the necessary foodstuff if the resources of the occupied territory are insufficient. This article also prohibits the occupier from requisitioning food, even when destined for the sole use of its occupying forces, without taking into account the needs of the civilian population.

193. Additionally, article 69 (1) of Protocol I obliges the Occupying Power to ensure the provision of clothing, bedding, means of shelter and other supplies essential for the survival of the civilian population. 271/

(d) Conclusions

194. The guarantees of food, potable water, clothing and housing are of vital importance to internally displaced persons. As a survival right, the right to food, by necessity, must include a right to potable water; it should also guarantee access to a nutritionally balanced diet satisfying the specific needs of women, children, infants and the sick and elderly. Whether during their displacement, in transit, or when resettled in camps, all displaced persons should be entitled to the enjoyment of these most basic rights, including the right of safe access to food and water, all of which are essential to ensuring a minimally adequate standard of living. 272/ Although, in principle, international law guarantees such rights to internally displaced persons in all situations, including those of non-international armed conflict, any future international instrument should address these issues and highlight the absolute and non-derogable nature of

survival rights as well as the prohibition of starvation as a method of combat; and, it should extend this prohibition to starvation of the civilian population as a form of political coercion.

2. Health-related needs

(a) Medical care and sanitation, the wounded and the sick

195. One very serious consequence of internal displacement is exhaustion and illness. Those among the displaced population who are most in need of urgent or regular medical care are frequently denied such assistance. This group includes the wounded and sick, as well as infants and expectant mothers. Internally displaced persons may face a number of medical problems not only during the process of displacement where health care is hardly available but, for example, in camps where access to health services is limited. During hostilities, it is not unusual for internally displaced persons to become sick or wounded when caught in crossfires or subjected to indiscriminate weapons. Such persons require urgent and often long term medical care and treatment.

(i) Situations of tensions and disturbances, or disasters

196. The right to medical care and necessary social services is proclaimed in article 25 (1) of the Universal Declaration as part of the right to an adequate standard of living. 273/ Article 12 of the ICESCR is dedicated to the realization of "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Paragraph 2 of that provision elaborates on the commitment by States to take steps to fully realize this right and includes, *inter alia*, "(c) the prevention, treatment and control of epidemic, endemic, occupational or other diseases; (d) the creation of conditions which assure to all medical service and medical attention in case of sickness." 274/

197. Under article 24 (1) of the Convention on the Rights of the Child, States parties "recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services." Article 24 (1) of the Convention thus recognizes the right of the child to facilities for the treatment of illness and rehabilitation of health. The second paragraph of the article details the obligations of States to take appropriate measures to diminish infant and child mortality, provide for primary health care, combat disease and malnutrition, ensure appropriate pre-natal and post-natal health care for mothers, ensure health education, and develop preventive health care. 275/ Article 39 of the Convention requires States parties to take "all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim" of, *inter alia*, exploitation, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflict. Furthermore, this article mandates that such recovery and reintegration take place in an environment which fosters the child's health, self-respect and dignity.

198. A range of human rights provisions implicate aspects of the right to health care particularly applicable to women. 276/ Article 12 of the Women's Convention provides that States parties shall take all appropriate measures to ensure, on a basis of equality of men and women, access to health care services, and to ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period. Under article 14 (2) of the Convention, States parties agree to take all appropriate measures to eliminate discrimination against women in rural areas, and to ensure to those women, in particular, the right to have access to adequate health care facilities (subpara. (b)), and the right to "enjoy adequate living conditions, particularly in relation to ... sanitation" (subpara. (h)).

199. Regionally, the obligation to adopt the necessary measures to progressively achieve the full exercise of the right to the enjoyment of the highest level of physical, mental and social well-being is guaranteed in article 10 of the Protocol of San Salvador. States parties to that instrument agree to ensure primary health care, public health education and other practical measures. Article 16 of the African Charter endows each person with the "right to enjoy the best attainable state of physical and mental health." To that end, States parties "shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick" (para. 2). The European Social Charter, in article 11, obligates States to take measures such as removing "as far as possible the causes of ill-health" and preventing "as far as possible epidemic, endemic and other diseases" in order to ensure "the effective exercise of the right to protection of health."

200. An additional right to preservation of health through sanitary measures is found explicitly in article XI of the American Declaration. A right to sanitation, however, should be inferred as inherent in the right to realize the highest attainable standard of health. A right to sanitation should also include a guarantee of safe access to such sanitation, since this lack of safe access can prove to be a serious problem in camps for the internally displaced, especially for women.

201. A variety of refugee standards focus on the right to adequate health care, particularly for women and children. Particular emphasis is placed on the needs of women for preventive care; gynaecological and reproductive health care, provided with sensitivity to religious, ethnic and cultural contexts; female doctors; and medical and psycho-social care for victims of gender-specific violence. 277/ A high priority is placed on health services for children in accordance with the Convention on the Rights of the Child and the health goals of the 1990 World Summit for Children. 278/

(ii) Non-international armed conflict

202. The Committee on Economic, Social and Cultural Rights has stated that the deprivation of any significant number of persons "of essential primary health care" constitutes a violation of the Covenant unless the State concerned can demonstrate "that every effort has been made to use all resources that are at its disposition." 279/

203. Common article 3 requires the parties to internal armed conflicts to treat humanely all persons who do not or no longer actively participate in the hostilities. Common article 3 further obliges the contending parties to collect and care for the wounded and sick without conditions. Thus, wounded and sick displaced persons who fall under the control of a party to the conflict are entitled to medical care, whether or not they previously committed hostile acts.

204. Protocol II elaborates on the common article 3 duty by providing in article 7 that all "wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected." 280/ The phrase "respected and protected" includes an obligation on the part of the parties to the conflict to assist and take care of the wounded and sick, and to "abstain from knowingly attacking" such persons. 281/ Paragraph 2 of article 7 specifically requires that the wounded, sick and shipwrecked, in all circumstances, "be treated humanely and ... receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition." Moreover, the parties cannot make a distinction in the provision of medical care on any grounds other than medical ones. Persons, including the internally displaced, who are wounded, sick or shipwrecked during hostilities governed by Protocol II must thus be accorded the non-derogable guarantees of article 7. Inasmuch as article 7 of Protocol II merely clarifies and elaborates on the pre-existing duty in common article 3 to provide the wounded and sick with medical care, it should be regarded as customary law and, as such, be respected and applied by the parties to all internal armed conflict.

205. Article 8 of Protocol II states that "[w]henever circumstances permit, and particularly after an engagement, all possible measure shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care." This provision would apply to those internally displaced who are wounded, for whatever reason, during military operations.

206. Guarantees for the humane treatment of detained or interned persons, as set forth in article 5 (1) (b) of Protocol II, include medical care and hygiene. Like the right to food and water, however, the right to medical care and hygiene is not guaranteed for persons whose liberty has been restricted other than by detention or internment. Finally, in the event of a population transfer where the security of citizens is involved or imperative military reasons so demand, article 17 (1) of Protocol II requires the taking of "all possible measures ... in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition." 282/

(iii) Inter-State armed conflict

207. A Government should be prohibited from restricting or suspending its obligation to provide internally displaced persons with the essentials needed for their survival, including medical care, sanitation, and safe access thereto. According to article 55 of the Fourth Geneva Convention, in a situation of inter-State armed conflict, the Occupying Power has a duty to ensure medical supplies to the population and, if the occupied territory's

own resources are insufficient, the Occupying Power should provide for the necessary medical articles. Similar to the requisitioning of food, the Occupying Power is prohibited from requisitioning medical supplies for the use of its forces without taking into account the needs of the civilian population. In addition, article 56 of the Fourth Geneva Convention proclaims the Occupying Power's duty to ensure and maintain medical and hospital facilities and services, public health and hygiene. Furthermore, the civilian population's "moral and ethical susceptibilities" must be taken into account with regard to health and hygiene.

208. Under article 49, paragraph 3, of the Fourth Geneva Convention, in the event of individual or mass forcible transfer or evacuation of protected persons from an occupied territory, the Occupying Power "shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, (and) that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition ..."

209. Article 16 of the Fourth Convention which covers the whole of the populations of belligerent countries requires that the wounded and sick, the infirm and expectant mothers "shall be the object of particular protection and respect". Paragraph 2 of this article mandates that, as far as military considerations allow, "each Party to the conflict shall facilitate the steps taken to search for the ... wounded, to assist ... persons exposed to grave danger, and to protect them against pillage and ill-treatment". Article 17 states that parties to a conflict shall endeavour to conclude local agreements for the evacuation from besieged or encircled areas of the wounded, sick, infirm, aged persons, children and maternity cases. Articles 18 and 19 of the Fourth Convention set forth the provisions regarding the protection of civilian hospitals from attack. 283/ Article 21 provides that convoys transporting "wounded and sick civilians, the infirm and maternity cases" by land or sea, "shall be respected and protected in the same manner as the hospitals provided for in Article 18," and shall, with the State's consent, be marked with the distinctive emblem. Article 22 establishes the general immunity from attack of duly marked aircraft that are exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases or for the transport of medical personnel and equipment. 284/

210. Part II of Protocol I, which includes articles 8 through 34, applies to all persons, civilians and combatants, who are wounded, sick or shipwrecked during international armed conflicts. It also affords protection to wounded and sick civilians that is comparable to that of the military. Moreover, internally displaced persons cannot be denied or provided less medical care based on their status as displaced persons under the broad non-discrimination clause of article 9.

211. Article 10 of Protocol I reiterates, in substantially similar terms, article 7 of Protocol II stating that "[a]ll the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected". Paragraph 2 of article 10 is literally the same as article 7 (2) of Protocol II. Furthermore, article 11 of Protocol I prohibits any unjustified act or omission that might endanger the physical or mental health and integrity of persons who are in the adverse party's hands, or who are

interned, detained, or otherwise deprived of their liberty for reasons related to the armed conflict. Under certain circumstances, such persons will include internally displaced persons. 285/

(iv) Conclusions

212. It can be concluded that international law adequately protects the health-related needs of internally displaced persons in situations of tensions and disturbances, or disasters and during inter-State armed conflicts. In principle, the right to health and related rights are also guaranteed by international law in situations of non-international armed conflicts. There is a need to address, in a future international instrument, the specific needs of internally displaced women in the areas of reproductive and psychological health care.

(b) Persons with disabilities

213. Persons among the internally displaced who have disabilities may require special services and other kinds of assistance on a continuous basis. Whether their disabilities are physical and/or mental, such persons may be particularly dependent on their Government or families for medical and related services and other kinds of assistance which may be abruptly curtailed or terminated as a result of their displacement and consequent separation from care givers or special devices and facilities. Disabled persons may also need special protection against discrimination and degrading or arbitrary treatment based on their disabilities as such.

(i) Situations of tensions and disturbances, or disasters

214. In an explicit reference to disability, article 25 (1) of the Universal Declaration provides that "[e]veryone has the right ... to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". In 1993, the United Nations General Assembly took an important step by adopting the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. 286/ According to these rules, persons with disabilities 287/ are entitled to enjoy to the maximum extent feasible the same rights and freedoms as those who are not affected by disabilities. 288/

215. Such persons are guaranteed freedom from discrimination on account of their disability or other grounds specified by treaty. Thus, the Committee on Economic, Social and Cultural Rights has expressly noted that the term "other status" in the ICESCR's non-discrimination clause includes disability. 289/ The Committee expressed special concern for women with disabilities who often suffer from "double discrimination" 290/ and for children with disabilities. 291/ The duty to make a "reasonable accommodation" arguably encompasses modifications or adjustments that allow a person with disabilities to participate in society on an equal footing with a non-disabled person. 292/

216. Article 2 (1) of the Convention on the Rights of the Child expressly prohibits, *inter alia*, discrimination based on disability. States parties to that treaty also recognize the special needs of children with disabilities and their right to special care, and they commit themselves to encourage and ensure necessary assistance to the child (art. 23 (2)). The Convention provides that such assistance "shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development" (art. 23 (3)). Furthermore, under article 39 of the Convention, States parties are to take all appropriate measures "to promote physical and psychological recovery and social reintegration of a child victim of: ... torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

217. Various regional instruments provide in certain ways for the legal protection of persons with disabilities. Article XVI of the American Declaration raises the issue of disabilities in the context of a person's right to social security. Article 10 of the Protocol of San Salvador guarantees every person the right to the enjoyment of the highest level of physical, mental and social well-being. Specific protection is found in article 18, which states that "[e]veryone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality." In order to achieve this goal, States parties to this instrument agree to adopt necessary measures. Article 16 of the African Charter grants every person the right to enjoy "the best attainable state of physical and mental health." More particularly, article 18 of that instrument requires that the disabled shall have "the right to special measures of protection in keeping with their physical or moral needs." Finally, article 15 of the European Social Charter guarantees a right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement.

(ii) Non-international armed conflict

218. Since human rights law remains applicable during internal hostilities, it thus accords internally displaced persons with disabilities protection against deprivation of their rights by State agents as discussed above. As for humanitarian law, neither common article 3, nor Protocol II contain provisions rendering special protection for persons with disabilities. Assuming that they do not or no longer participate in hostilities, such persons are entitled to humane treatment without adverse distinction and enjoy protection against violence to life and outrages upon their personal dignity, including humiliating and degrading treatment (common art. 3 and art. 4 of Protocol II). Persons with disabilities may also benefit from those provisions in common article 3 and Protocol II relating to medical care and services, and those dealing with the wounded and the sick. 293/

(iii) Inter-State armed conflict

219. Like the law governing internal armed conflicts, neither the Fourth Geneva Convention nor Protocol I mandates any special protection for persons with disabilities. The legal protection of disabled persons who are internally displaced during inter-State armed conflicts is therefore subsumed in the general provisions of these instruments, including those dealing with medical care and services, 294/ and in applicable human rights treaties.

(iv) Conclusions

220. Internally displaced persons with disabilities are protected by human rights law and, at least indirectly, by humanitarian law. In the light of the special needs of disabled persons in camps for internally displaced persons, a future international instrument should address questions related to the rights of the disabled.

E. Movement-related needs

221. The most obvious need of internally displaced persons is protection against violations of the right to choose their own residence and to move freely within their own region and country. 295/ Likewise, they need protection against forced relocation and mass transfers. Furthermore, the displaced should be protected against forced return to places with conditions dangerous to their health and/or safety, and, thus, should be ensured the right to return voluntarily and in safety to their place of residence or, if that is impossible, to a safe place. Finally, circumstances can require displaced persons to leave their own country and, in some cases, to seek asylum elsewhere.

1. Moving within one's country, choosing one's residence, and protection against eviction, displacement, relocation and mass transfer

(a) Situations of tensions and disturbances, or disasters

222. The fact of internal displacement, by its very nature, restricts the fundamental right to choose the place of one's own residence and the corresponding right to freedom of movement. Both rights are also restricted during the period of displacement, in so far as persons temporarily resettled in camps often are not free to move in and out of such camps. 296/ Moreover, restrictions on free movement might be detrimental to the need of persons in situations of acute danger to find refuge in a safer part of the country.

223. Freedom of residence and movement is expressly recognized as a basic human right in article 13 (1) of the Universal Declaration. This freedom is similarly guaranteed in article 12 (1) of the ICCPR which reads:

> "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." 297/

224. Similar guarantees are contained in regional instruments - for example, in article VIII of the American Declaration, article 22 (1) of the American Convention, article 2 (1) of the Fourth Protocol to the European Convention, 298/ and article 12 (1) of the African Charter. 299/ Article 16 (1) of ILO Convention No. 169 guarantees that "the peoples concerned shall not be removed from the lands which they occupy," unless "relocation of these peoples is considered necessary as an exceptional measure" and happens "with their free and informed consent" (para. 2). 300/ Various regional conferences have also proclaimed the right to freedom of movement, particularly in the context of internally displaced persons. 301/

225. The Sub-Commission on Prevention of Discrimination and Protection of Minorities has expressed its concern for the growing number of internally displaced persons around the world and has affirmed "the right of persons to remain in peace in their own homes, on their own lands and in their own countries." 302/

226. Besides article 16 (1) of ILO Convention No. 169, no express human rights norms exist which protect people against individual or mass transfers from one region to another within their own country. Article 9 of the Universal Declaration prohibits the arbitrary exile of any person. Other instruments ban the individual expulsion of their citizens 303/ and prohibit collective expulsion of aliens. 304/ However, since internally displaced persons remain within the borders of their own country, these provisions are not applicable to them. Consequently, under existing law, protection against individual or mass internal transfers must be inferred from the right to freedom of residence and movement.

227. In addressing the right to housing under article 11 (1) of the ICESCR, the Committee on Economic, Social and Cultural Rights stated that "instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law". 305/ While the freedom of movement is derogable, the right to housing is not; this implies that deprivations of the right to housing must comply with the requirements of article 4 of the Covenant. 306/

228. Most universal and regional human rights instruments permit States to place restrictions on the freedom of residence and movement during situations of tensions and disturbances, or during disasters. For example, article 12 (3) of the ICCPR, articles 22 (3) and (4) of the American Convention, article 12 (2) of the African Charter and article 2 (3) and (4) of the Fourth Protocol to the European Convention set forth the requirements and criteria for validly restricting the otherwise free exercise of this right. The application of such restrictions must be prescribed by law, based on one of the enumerated grounds justifying limitations, respond to a pressing public or social need, pursue a legitimate aim, and be proportionate to that aim. 307/ Thus, under article 12 of the ICCPR, the only restrictions allowed are those "which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant." Article 22 (3) of the

American Convention allows restrictions "only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others". Under paragraph 4 of this article, the exercise of the right to move about and reside in a country may also be restricted "by law in designated zones for reasons of public interest." The Fourth Protocol to the European Convention, in article 2 (3), provides that "[n]o restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of *'ordre public'*, for the prevention of crime, for the protection of the rights and freedoms of others". 308/ In practice, such restrictions could be applied, for example, in the case of a flood or typhoon, to enable the Government to relocate flood victims for reasons of public safety and/or public health. 309/

(b) Non-international armed conflict

229. Since, under human rights treaties, the freedom of residence and movement is derogable during genuine emergencies, Governments may be allowed to temporarily suspend these freedoms during internal armed conflicts. None the less, it is during such hostilities that these and other basic human rights of the displaced are generally most imperilled and least protected.

230. Common article 3 contains no provision which either expressly guarantees freedom of residence and movement, or explicitly prohibits the forced movement and relocation of civilians. However, article 17 of Protocol II, entitled "Prohibition of Forced Movement of Civilians", explicitly deals with this issue. Its paragraph 2 stipulates that "civilians shall not be compelled to leave their own territory for reasons connected with the conflict." Furthermore, paragraph 1 effectively prohibits the warring parties from ordering "the displacement of the civilian population ... for reasons related to the conflict "*unless* the security of the civilians involved or imperative military reasons so demand" (emphasis added). Moreover, "should such displacements have to be carried out," the responsible party must take "all possible measures ... in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition." This wording makes clear that article 17 prohibits, as a general rule, the forced movement or displacement of civilians during internal hostilities. Accordingly, the burden is squarely on the party initiating such action to justify it under the narrow exceptions to this rule. 310/

231. Article 4 (3) (e) of Protocol II further provides for the temporary removal of children from hostilities with the consent of parents or others responsible whenever possible.

(c) Inter-State armed conflict

232. In addition to relevant human rights norms, the Fourth Geneva Convention contains several provisions addressing the freedom of movement and residence of protected persons which, in many cases, include the internally displaced. 311/ Article 49 of the Fourth Geneva Convention elaborates on the movement of protected persons in the case of occupation. Paragraph 1 of

this article prohibits the "[i]ndividual or mass forcible transfer, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not," regardless of the motive. Paragraph 2 states that, "[n]evertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement." Finally, paragraph 6 prohibits the Occupying Power from deporting or transferring parts of its own population to territory it occupies. 312/

233. Article 51 (7) of Protocol I 313/ protects civilians against being compelled to leave their residence in order to disrupt the movement of combatants or to shield military objectives from attack. However, paragraph 7 does not prohibit measures "to restrict the movement of civilians so as to avoid their interference with military movement, nor does it prohibit ordering their evacuation if their security or imperative military reasons so demand." 314/ In addition, measures for evacuating children are found in article 78 (1) of Protocol I. This article sets forth requirements for parental or others' consent to evacuation and detailed procedures for identifying children to be evacuated in a manner which should facilitate return to their families and country.

234. Pursuant to article 147 of the Fourth Geneva Convention, the unlawful deportation, transfer, or confinement of a protected person is a grave breach. In addition, article 85 (4) (a) of Protocol I typifies the wilful "transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of article 49 of the Fourth Convention" as a grave breach of the Protocol.

(d) Conclusions

235. The freedom of movement and the right to choose one's residence as well as the more elaborate guarantees of humanitarian law prohibit, in principle, forced displacement and relocation. Thus, a right not to be displaced or relocated exists in international law although its specific content and its limitations remain unclear. They raise complex legal issues and need to be further researched. The freedom of movement also affords persons in situations of danger with a right to find refuge in a safe part of the country; 315/ this right, however, is not explicitly recognized in international law and should be enunciated in a future international instrument.

2. Leaving one's country and seeking asylum

236. Internally displaced persons often find security in their own country. However, because of their religion, race or ethnic origin or their political opinion they sometimes face persecution and, therefore, need to find

protection abroad. They also might wish to emigrate in order to find a better future for themselves and their families in another, more peaceful country.

(a) Situations of tensions and disturbances, or disasters

237. Like anyone else, an internally displaced person has the right to leave his or her country. The right to leave any country, including one's own, is recognized in article 13 (2) of the Universal Declaration, article 12 (2) of the ICCPR, article 22 (2) of the American Convention, article 2 (2) of the Fourth Protocol to the European Convention, and article 12 (2) of the African Charter. 316/ States parties to these instruments can validly place restrictions on the exercise of this right. 317/

238. A displaced person also has the right to seek asylum elsewhere. 318/ This right is not included in the Covenants 319/ or the Refugee Convention. However, it is proclaimed in various other human rights instruments. Article 14 (1) of the Universal Declaration speaks of the right of everyone "to seek and to enjoy, in other countries, asylum from persecution". Paragraph 2 of this article, however, states that this right "may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations." Article XXVII of the American Declaration establishes a right to seek and receive asylum while article 22 (7) of the American Convention guarantees everyone "the right to seek and be granted asylum in a foreign territory ... in the event he is being pursued for political offenses or related common crimes." Furthermore, article 12 (3) of the African Charter grants every "individual ... the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions." 320/ Finally, the Vienna Declaration and Programme of Action reaffirms "that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution." 321/

(b) Non-international armed conflict

239. In officially proclaimed situations of non-international armed conflict which threaten the life of the nation, none of the human rights treaties mentioned above which contain a derogation clause explicitly declare the rights to leave one's own country and to seek asylum to be non-derogable. Humanitarian law contains no additional provisions which grant an individual the right to leave his or her country, other than those provisions mentioned under the right of freedom of residence and movement. Furthermore, in contrast to international human rights law and refugee law, international humanitarian law applicable to internal armed conflicts does not include any provisions regarding asylum.

(c) Inter-State armed conflict

240. Neither the Geneva Conventions nor Protocol I deals with the right to seek and enjoy asylum. However, article 73 of Protocol I 322/ is relevant to internally displaced persons who, before the outbreak of hostilities, flee their country and become bona fide refugees in a country

which subsequently is occupied by the refugees' home country. Although nationals of the Occupying Power, these refugees must be accorded the status of protected persons under Parts I and III of the Fourth Geneva Convention, even in relation to the Occupying Power. 323/

(d) Conclusions

241. There is insufficient legal protection regarding the right of internally displaced persons in situations of armed conflict to leave their country and seek asylum elsewhere. This gap should be addressed in a future international instrument. In addition, as several countries are not ready to grant asylum to refugees if they can find an "internal flight alternative", i.e. refuge in their own country as internally displaced persons, it should be stressed that the right to seek and enjoy asylum is not forfeited by the fact that asylum-seekers have previously been internally displaced.

3. Return

242. Once persons are internally displaced, they need to be guaranteed the right to return voluntarily and in safety to their place of residence. 324/ Displaced persons also need protection against forced return or relocation to places with conditions dangerous to their safety and/or health. 325/

(a) Situations of tensions and disturbances, or disasters

243. There is no general rule that affirms the right of internally displaced persons to return to their original place of residence or to move to another safe place of their choice. However, such a right can, in principle, be deduced from the freedom of movement and the right to choose one's residence. 326/ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries states explicitly that "[w]henever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist" (art. 16, para. 3).

244. At least in one case, the United Nations Security Council, "affirme[d] the right of refugees and displaced persons to return to their homes." 327/ In a similar vain, the Sub-Commission on Prevention of Discrimination and Protection of Minorities affirmed "the right of refugees and displaced persons to return, in safety and dignity, to their country of origin and/or within it, to their place of origin or choice." 328/

245. The freedom of movement and the right to choose one's residence can be limited. Article 12 (3) of the ICCPR, for example, does not allow "any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant." The requirement of necessity calls for a narrow interpretation of this limitation clause.

246. Human rights law recognizes the right of an individual, outside of national territory, to return to his or her country. 329/ This right is found in article 13 (2) of the Universal Declaration 330/ and article 12 (2)

of the African Charter, 331/ while article 12 (4) of the ICCPR prohibits the arbitrary deprivation of the right to enter one's own country. Furthermore, article 22 (5) of the American Convention and article 3 (2) of the Fourth Protocol to the European Convention prohibit the deprivation of the right to enter the territory of the State of which a person is a national. Whereas article 12 (4) of the ICCPR allows for limitations on the right to return which are not arbitrary, the African Charter limits restrictions to those "provided for by law for the protection of national security, law and order, public health or morality" (art. 12 (2)). 332/ All these guarantees only refer to return across international borders and, therefore, are not directly applicable to internally displaced persons.

247. UNHCR has repeatedly emphasized the desirability of voluntary repatriation which it views as the most desirable solution to refugee problems, particularly those occurring on a large scale. 333/ Likewise, UNHCR has stressed the paramount importance that such repatriation take place under safe conditions and the need for refugees to make an informed decision regarding their voluntary return. 334/ Particular safeguards are required to ensure that a refugee woman's decision to repatriate is truly voluntary and not a result of coercion, either direct or circumstantial. 335/ Considerations including family unity and the best interests of the child govern UNHCR standards for voluntary repatriation of refugee children. 336/

248. No human rights instrument expressly provides internally displaced persons legal protection against being forcibly returned to places with unsafe conditions. It is true that in the area of refugee law, article 33 (1) of the Refugee Convention establishes the principle of *non-refoulement* which prohibits a refugee from being returned to a country where he or she has good reason to fear persecution. Article 33 (1) provides: "[n]o Contracting Party shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." 337/ UNHCR has consistently reaffirmed the significance of the principle of *non-refoulement* to refugees. 338/ In the area of human rights law, article 22 (8) of the American Convention similarly protects aliens from deportation or return to "a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions". 339/ However, the application of these instruments is clearly restricted to persons who have left their own country.

249. Another approach to the question of forced return to situations of danger can be found in the law relating to the prohibition of torture and cruel or inhuman treatment. Thus, article 3 (1) of the Torture Convention provides that

> "No State party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

250. Regarding article 7 of the ICCPR which prohibits torture and cruel, inhuman or degrading treatment, the Human Rights Committee stated that "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement." 340/ The Committee has also decided that forcible return is prohibited if the individual concerned risks, in the country to which he or she is returned, a violation of the right to life. 341/

251. This jurisprudence is inspired by the case law of the European Court on Human Rights regarding the prohibition of inhuman treatment (art. 3, European Convention). The Court has held that the decision of a State to extradite, expel or deport a person

> "may give rise to an issue under article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country (...)." 342/

252. The case law regarding article 3 of the Torture Convention, article 7 of the ICCPR and article 3 of the European Convention only concerns forcible return across international frontiers and is thus not directly applicable to internally displaced persons. However, this jurisprudence might become relevant for such persons because it regards the act of handing an individual over to his torturer, murderer or executioner as a violation of the obligation to protect individuals against torture and unlawful deprivations of life. Thus the Human Rights Committee, in the Ng case, involving an extradition from Canada to the United States, observed "that what is at issue is not whether Mr. Ng's rights have been or are likely to be violated by the United States, which is not a State party to the Optional Protocol, but whether by extraditing Mr. Ng to the United States, Canada exposed him to a real risk of a violation of his rights under the Covenant. ... A State party to the Covenant must ensure that it carries out all its other legal commitments in a manner consistent with the Covenant. The starting point for consideration of this issue must be the State party's obligation, under article 2, paragraph 1, of the Covenant, namely to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant." 343/ Similarly, the European Court of Human Rights stated that in cases of inhuman return, "there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment." 344/ This argument which, according to the Court, applies not only to extradition cases but also to cases of deportation, 345/ is also valid for forcible return of internally displaced persons to areas where they must face serious risks of torture and cruel or inhuman treatment or of violations of their right to life. If it is the responsibility of States not to make torture or summary or arbitrary executions possible by handing persons over to the actual perpetrators of

such human rights violations, there is no reason why the State's responsibility is not similar when the forcible return takes place within the same country. Such reasoning would be in line with the opinion of the Human Rights Committee that "[t]he aim of the provisions of article 7 ... is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity." 346/

(b) Non-international armed conflict

253. The right of internally displaced persons to return to their place of origin or residence, as derived from the guarantee of freedom of movement and residence, can be limited and is derogable. 347/ In contrast, the prohibition of return in cases of imminent violations as derived from the prohibition of torture and inhuman treatment or of the right to life as embodied in article 3 of the Torture Convention, article 7 of the ICCPR and article 3 of the European Convention is absolute as these guarantees allow for no limitations and are non-derogable.

254. Neither common article 3 nor Protocol II contains rules governing the right of the internally displaced to return to their residences. Accordingly, such a right during internal armed conflicts must be wholly inferred from human rights law and the few inferences available from law applicable to certain situations in inter-State armed conflict.

(c) Inter-State armed conflict

255. Few provisions of the Fourth Geneva Convention deal with the return or repatriation of protected persons, and most of those that do are of little importance to displaced civilians. 348/ None of them protect internally displaced persons against return to dangerous situations. Therefore, in situations of inter-State armed conflict, guidance must be found for the non-derogable human rights prohibition of return to situations of imminent danger of torture and similar human rights violations.

256. Most relevant to the return of internally displaced persons is article 49 of the Fourth Convention which states, in paragraph 2, that persons who, during an occupation, have been evacuated in accordance with article 49, paragraph 2 "shall be transferred back to their homes as soon as hostilities in the area in question have ceased". Article 85 (4) (b) of Protocol I declares as a grave breach, *inter alia*, the unjustifiable delay in the repatriation of civilians when committed wilfully and in violation of the Geneva Conventions and the Protocol.

(d) Conclusions

257. It can be concluded that internally displaced persons have a right to voluntary return to their places of origin as inherent in the freedom of movement. Regarding forcible return to areas of serious and imminent danger in the same country, there is no explicit prohibition recognized in present international law. However, beyond the protection provided by the freedom of

movement, universal and regional treaty bodies have developed, on the basis of the prohibition of torture and inhuman treatment, a prohibition of forcible return to countries where the person concerned would face imminent torture or summary or arbitrary execution. Given its fundamental purpose and humanitarian character, a concept analogous to the principle of *non-refoulement* or to the prohibition of forcible return to another country in cases of real risk of imminent torture or death should be extended to internally displaced persons as well. Accordingly, any future international instrument applicable to the internally displaced should explicitly protect displaced persons from being forcibly returned to conditions of danger and persecution. In addition, such an instrument should also address the needs of internally displaced persons to return in safety to their homes once such return becomes possible.

F. Need for Personal Identification, Documentation and Registration

258. Internal displacement often results in the loss of personal papers and documentation. It also makes proper registration of events such as births and deaths extremely difficult, if not impossible. Although registration in camps and relocation sites often is required for purposes of documentation and to facilitate family reunification, many internally displaced persons are averse to being identified as internally displaced lest such labelling have discriminatory effects. As a consequence, displaced persons often lack the legal protections and privileges extended to those who hold identifying documents.

1. Situations of tensions and disturbances, or disasters

259. The Universal Declaration and the ICCPR set forth the fundamental right to a legal personality. Specifically, article 6 of the Universal Declaration states that everyone has the "right to recognition everywhere as a person before the law". Under article 2, this protection is extended to all people "without distinction of any kind, such as ... property ... or other status," which arguably includes their status as internally displaced persons. Article 16 of the ICCPR reiterates the right to "recognition as a person before the law".

260. Under article 16 of the Women's Convention, guarantees of equality of spouses in asserting the rights of legal personhood are extended to those who marry. Paragraph 2 of that article requires States parties to enact legislation to mandate registration of marriages in an official registry. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 349/ also requires States parties to ensure that competent authorities register all marriages in appropriate official registers (art. 3). In addition, article 2 of the Supplementary Convention on the Abolition of Slavery 350/ requires States to undertake to encourage the registration of marriages, and a subsequent General Assembly resolution reiterates the importance of registering marriages. 351/

261. Children are assured the right to legal protection as required by their status as minors without discrimination as to, *inter alia*, property or birth. 352/ Various instruments recognize the obligations of States to register children immediately after birth and to protect their right to a

name from the moment of birth. 353/ States parties to the Convention on the Rights of the Child further agree to "undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference". 354/ When a child is unlawfully deprived of his or her identity, article 8 of the Convention further requires States to provide assistance and protection in "speedily re-establishing his or her identity".

262. At the regional level, article XVII of the American Declaration acknowledges every individual's right "to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights". Furthermore, article 3 of the American Convention sets out the right to juridical personality for every individual, guaranteeing the non-derogable right 355/ of every person to recognition as a person before the law. Article 18 of the American Convention also provides every person the "right to a name" as an important element of individual identity, which likewise is declared non-derogable. 356/ The European Convention does not explicitly mention the right to a legal personality. However, article 8 of the European Convention protects aspects of one's identity by guaranteeing to every person respect "for his private ... life". 357/ Article 5 of the African Charter provides that every person shall have the right "to the recognition of his legal status". 358/

263. Refugee law provides a justification for protecting the rights acquired by internally displaced persons that pre-date displacement. Article 12 (2) of the Refugee Convention states that rights "previously acquired by a refugee and dependent on personal status," such as rights attaching to marriage, shall be respected by contracting States. In addition, the Refugee Convention requires a contracting State to provide administrative services to refugees residing in its territory, including the delivery to these persons of "such documents or certifications as would normally be delivered to aliens by or through their national authorities". Those documents are to be given "credence in the absence of proof to the contrary" (art. 25). 359/

264. Particular measures based on the rights discussed above apply to the specific needs of refugee women and children in this area. In requiring that women be given equal access with men to registration documents and/or individual identifications in their own names, UNHCR seeks to eliminate inequities that lead to, among other things, extortion and other forms of gender-based violence, and to provide a means to prove legal status. 360/ States are also urged to provide for the registration of births and the granting of a nationality to refugee children. 361/

2. Non-international armed conflict

265. The fundamental importance of protecting the right to juridical personality in times of national emergency is affirmed by article 4 (2) of the ICCPR and article 27 (2) of the American Convention which declare the right non-derogable. 362/ Thus, even in emergency situations threatening the life of the State, the right to legal personality is expressly non-derogable. A right to appropriate documentation for internally displaced persons in situations of non-international armed conflict is not expressly recognized in international humanitarian law.

3. Inter-State Armed Conflict

266. In addition to the human rights instruments mentioned above, the right to a legal personality and documents establishing legal rights in international armed conflict is directly addressed in the Fourth Geneva Convention and Protocol I. In relation to protected persons, article 50, second paragraph, of the Fourth Geneva Convention provides that the "Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status". Furthermore, the fourth paragraph of this article makes a special section of the Information Bureau 363/ responsible "for taking all necessary steps to identify children whose identity is in doubt". The Fourth Convention also addresses the need to protect the legal personality of civilian internees in situations of occupation. 364/

267. Article 78 of Protocol I reiterates the importance of legal identity in the context of evacuating children to a foreign country in times of war. Specifically, under paragraph 3 of this article, authorities of the party who arrange such an evacuation and, if appropriate, the authorities of the receiving country must establish, for each child, a card with a photograph which shall be sent to the Central Tracing Agency of the International Committee of the Red Cross. 365/

4. Conclusions

268. Present international law does not adequately protect the needs of internally displaced persons for personal identification, documentation and registration. A future international instrument applicable to internally displaced persons should articulate specific duties of States or non-governmental actors to meet such needs in the context of displacement.

G. Property-related needs

269. Internally displaced persons regularly loose much of their property when displaced. Because of their vulnerability, such persons need protection for the property left to them or acquired during displacement. The destruction or theft of crops and livestock, the bombing or burning of shelters and confiscation or forcible occupation of private homes by military or paramilitary forces are among the experiences faced by internally displaced persons, especially in situations of armed conflict. When internally displaced persons return to their homes, they may find their properties occupied by other people; therefore, they need restitution of the property or compensation for its loss.

1. Situations of tensions and disturbances, or disasters

270. Article 17 of the Universal Declaration grants everyone the right to own property alone or in association with others. Paragraph 2 of that article prohibits arbitrary deprivation of such property. No comparable right is found in either the ICCPR or the ICESCR.

271. Freedom from discrimination in the enjoyment of property ownership is mentioned specifically in article 5 (d) (v) of the Racial Discrimination Convention. Article 16 (1) (h) of the Women's Convention reiterates the equal rights of husband and wife in owning, acquiring, managing, administering, enjoying and disposing of property.

272. ILO Convention No. 169 deals in articles 13 to 19 with land issues in relation to indigenous and tribal peoples in independent countries. Article 13 (1) of this treaty provides that "[i]n applying the provisions of this Part of the Convention Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship". Furthermore, article 14 requires recognition of ownership and possession rights of indigenous and tribal peoples over lands which they traditionally occupy.

273. On a regional level, article XXIII of the American Declaration states that "[e]very person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home". Article 21 of the American Convention elaborates on the right to property and provides that, whilst individuals have the right to use and enjoy their property, such use and enjoyment may be subjected by law to the interest of society. Paragraph 2 of this article states that no person shall be deprived of his property "except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law". Article 1 of the First Protocol to the European Convention grants every person the right to "the peaceful enjoyment of his possessions," and prohibits the deprivation of such possessions "except in the public interest and subject to the conditions provided for by law and by the general principles of international law". The right to property is also recognized in article 14 of the African Charter which allows only for those restrictions that are in the interest of public needs or the general interest of the community and are in conformity with the law. 366/

274. In the instruments surveyed, the individual's right to own, possess and/or use private property is not absolute. Rather, it may be subject to certain interests of society as provided by law and/or to such limitations as "the just requirements of morality, public order and the general welfare in a democratic society". 367/ Under the domestic laws of States which enshrine private property rights, the authorities may have a legal obligation to protect such property from unlawful interference by third parties and to restore property to rightful owners following a period of de facto dispossession.

275. When internally displaced persons return to their homes they may find their properties occupied by other people. This is frequently an obstacle to return, and it raises questions concerning the right to restitution for the property or compensation for its loss. There is a certain trend in general human rights instruments, along with the progressive development of international law, to answer these questions in the affirmative. 368/

The Inter-American Commission on Human Rights has recommended payment of just compensation to returning internally displaced persons for loss of their property including homes, crops, livestock and other belongings. 369/

2. Non-international armed conflict

276. Assuming that the existence of an internal armed conflict constitutes a public emergency satisfying the requirements for derogation, States parties to the American Convention and the First Protocol to the European Convention can temporarily suspend the right to own, use and enjoy property.

277. Although common article 3 does not directly address property rights, customary law and article 4 of Protocol II explicitly prohibit pillage (para. 2 (g)), a ban which protects the personal property of displaced persons (located in the camps and/or left in the homes from which they have fled) from theft and vandalism. Additional protection against the destruction of property belonging to displaced persons can be derived from article 14 of Protocol II. This article prohibits the attack, destruction, removal or rendering useless of those objects which are considered indispensable to the survival of the civilian population, such as "foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works". 370/

278. Under the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (General Assembly resolution 3318 (XXIX) of 14 December 1974), "[a]ll forms of repression and cruel and inhuman treatment of women and children, including ... destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories shall be considered criminal" (para. 5).

3. Inter-State armed conflict

279. An inter-State armed conflict, particularly if fought in the territory of a State party to one of the referenced human rights treaties, could justify derogation from the right to property under the instruments discussed above. During such conflicts, the customary laws of war, principally embodied in the Hague Regulations Respecting the Laws and Customs of War on Land of 1907, as well as the Fourth Geneva Convention and Protocol I, extend certain protections to property through guarantees that are enjoyed by persons, including internally displaced persons, who own or use such property.

280. Article 23 of the Hague Regulations contains a general prohibition against the destruction or seizure of the enemy's property, unless imperatively required by military necessity. Article 25 of these Regulations prohibits the "attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended". This prohibition is elaborated in article 59 of Protocol I which provides special protection against attack for non-defended localities. Similar protection is accorded by article 60 of Protocol I to demilitarized zones. 371/

281. During hostilities and/or occupation, pillage of a town or place is prohibited by articles 28 and 47 of the Hague Regulations, respectively. Article 33 of the Fourth Geneva Convention also proscribes pillage and reprisals, *inter alia*, against property belonging to protected persons which, in most cases, would include internally displaced persons.

282. Various legal restraints on an Occupying Power provide internally displaced persons with some safeguards against the arbitrary taking or confiscation of their property. For example, article 53 of the Fourth Convention prohibits any destruction of real or personal property by the Occupying Power, regardless of whether this property is owned by private persons individually or collectively, or belongs to the State, to another public authority or to social or cooperative organizations. The single exception permitted is "where such destruction is rendered absolutely necessary by military operations". Moreover, article 46 of the Hague Regulations prohibits the confiscation of private property by the Occupying Power. Privately owned immovable property is also not subject to seizure, but may be requisitioned for the needs of the occupying force (art. 52 of the Hague Regulations).

283. Article 147 of the Fourth Convention typifies as a grave breach "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly". Under this provision, destruction of property protected under the Convention subjects the perpetrators to prosecution under universal jurisdiction.

4. Conclusions

284. While a right to property for internally displaced persons is mainly protected by regional human rights conventions and by humanitarian law, the right to restitution of property lost as a consequence of displacement or compensation for its loss is not fully recognized and, therefore, should be addressed by a future international instrument.

H. Need to maintain family and community values

285. Internal displacement often affects whole communities, dispersing not only community members but entire families. Frequently, family and community members are left with no knowledge of the whereabouts of their relatives and other members of their community or village. During flight and temporary relocation, the internally displaced may be restricted in the ability to speak and use their own language and practise their own religion.

1. Family unity, including family reunification, unity of the village and/or community

286. During any stage of internal displacement, it is important for internally displaced families to remain together. The same is true for those communities which are culturally considered to be extended families. If these internally displaced persons are none the less dispersed and separated from one another, they must be able to reunite as quickly as possible. Although everyone suffers from the pain of involuntary separation, children are particularly vulnerable in those situations.

(a) Situations of tensions and disturbances, or disasters

287. A wide range of international human rights instruments declares that the family is the fundamental unit of society requiring special protection. For example, article 16 (3) of the Universal Declaration and article 23 (1) of the ICCPR declare that the family is "the natural and fundamental group unit of society and is entitled to protection by society and the State". States parties to the ICESCR likewise recognize the primacy of the family to which the widest possible protection and assistance should be granted, particularly where dependent children are present (art. 10 (1)). Article VI of the American Declaration considers the family to be the basic element of society and grants every individual the right to receive protection therefor. Article 17 (1) of the American Convention reiterates article 23 (1) of the ICCPR. According to article 18 (1) of the African Charter, the family "shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral needs". Furthermore, the State "shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community" (para. 2). Finally, the European Social Charter provides a right of the family to social, legal and economic protection.

288. Most international human rights treaties also guarantee protection against any kind of interference with a person's privacy, family, home and correspondence. Article 12 of the Universal Declaration declares that "[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ... Everyone has the right to the protection of the law against such interference ...". Article 17 of the ICCPR protects against arbitrary or unlawful interference with a person's privacy, family, home or correspondence, guaranteeing the right to protection of the law against such interference. 372/

289. Because of a child's vulnerability and dependence on parents and family, children enjoy special protection, both in universal and in special human rights treaties. In this respect, the World Conference on Human Rights has stated that: "National and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular ... displaced children, ... children in armed conflict, as well as children victims of famine and drought and other emergencies". 373/ Article 24 (1) of the ICCPR guarantees every child, without any discrimination on enumerated grounds, the right "to such measures of protection as are required by his status as a minor, on the part of his family, society or the State".

290. The Convention on the Rights of the Child is more specific and directly addresses the family and family relations. Article 7 (1) states that the child, as far as possible, has the right to know and be cared for by his or her parents. Furthermore, States parties to this treaty are required to respect "the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention" (art. 5). Under article 8,

States parties undertake to respect the child's right to maintain family relations, requiring the State party to provide appropriate assistance and protection in the case of unlawful deprivation of such relations. States parties must further ensure that a child is not separated against its will from its parents, except where competent authorities subject to judicial review have determined otherwise (art. 9 (1)). With regard to a child's separation from his or her parent(s), article 9 (4) (first sentence) provides that "[w]here such separation results from any action initiated by a State party, such as the detention, imprisonment, exile, deportation or death ... of one or both parents or of the child, that State party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child".

291. The Convention deals with family reunification within the context of articles 10 and 22. Under its article 10, children and parents who reside in different States have the right to leave any country, including their own, and to enter their own country for purposes of maintaining contact with each other. As a general matter, States parties, in accordance with their obligation under article 9 (1), must deal with the child's or parent's application to enter or leave in a positive, humane and expeditious manner. With respect to refugee children, article 22 requires States parties to take appropriate measures to ensure that the child who possesses or seeks refugee status receives "appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments" to which the State is a party. For this purpose, States parties "shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family". 374/ As these provisions are limited to reunification across international borders, they do not normally apply to internally displaced persons.

292. The General Assembly has called on States to preserve, as far as possible, the cultural and family identity of refugee and displaced children. 375/ The World Declaration on the Survival, Protection and Development of Children has reinforced that the "family, as a fundamental group and natural environment for the growth and well-being of children, should be given all necessary protection and assistance". 376/ The participating States to the World Summit on Children further recognized "the special needs of children who are separated from their families". 377/ In the Plan of Action adopted at the Summit, the participants stated that "[e]very effort should be made to prevent the separation of children from their families. Whenever children are separated ... arrangements should be made for appropriate alternative family care or institutional placement ... Extended families, relatives and community institutions should be given support to help to meet the special needs of ... displaced ... children". 378/

293. The World Summit for Social Development recently noted that there was an urgent need for States to implement "[p]olicies that strengthen the family and contribute to its stability". 379/ The particular vulnerability of women to break-up of the family in times of displacement was recognized by the United Nations Special Rapporteur on violence against women in the context of refugee situations. 380/

294. In various conclusions, the UNHCR Executive Committee has reiterated the importance of the principles of family unity and family reunification. 381/ Refugee standards reflect particular concern for children with respect to the need to preserve or restore family unity. In providing a comprehensive framework for the responsibilities to children within the borders of States parties to the Refugee Convention, the UNHCR Policy on Refugee Children incorporates as "fundamental" the "principle of international law [that it is] primarily the responsibility of parents or legal guardians to care for children". Along with the best interests of the child, family unity is a guiding principle for decision-making involving refugee children. 382/ Guidelines for action by the agency and States are premised, *inter alia*, on the principle that "[t]he single best way to promote the psychosocial well-being of children is to support their families". 383/ Special attention has focused on the needs of children during evacuation to ensure adequate registration and documentation in order to enhance the possibility of reuniting such children with their families, 384/ and on the needs of unaccompanied children or those separated from their families. 385/

(b) Non-international armed conflict

295. Humanitarian law applicable in non-international armed conflicts does not contain many provisions for the protection of the family. The protection of common article 3 do not address the issue. Article 4 (3) of Protocol II provides that children shall be provided the care and aid they require. This article also requires that all appropriate steps be taken to facilitate the reunion of families temporarily separated (art. 4 (3) (b)). Finally, paragraph 3 (e) of this article requires that, if necessary, measures are taken to remove children "temporarily from the area in which hostilities are taking place to a safer area within the country". Such removal must be temporary, within the country, with the consent of the parent or guardian if possible, and the children must be allowed to travel with persons responsible for their safety and well being.

(c) Inter-State armed conflict

296. Humanitarian law applicable to inter-State armed conflict has a well-developed set of requirements for the protection of the family. Article 24 of the Fourth Convention, located in Part II which applies to all members of the population, including a State party's own nationals, requires parties to the conflict to take measures for the protection and identification of children under the age of 15 who are orphaned or separated from their families as a result of the hostilities. Likewise, the parties to the conflict are to facilitate the reception of such children into neutral countries for the duration of the conflict with the consent of the Protecting Power, if any (second paragraph). 386/ Because families often are

separated during inter-State armed conflicts, parties to the conflict are required to enable family members to communicate with each other. News of a strictly personal nature exchanged between family members is to be forwarded speedily and without delay (art. 25, first paragraph, of the Fourth Convention). 387/

297. In order to facilitate re-establishing contacts between and, if possible, reunification of family members, article 26 of the Fourth Geneva Convention requires each party to the conflict to facilitate inquiries made by members of families who are dispersed because of the hostilities. Likewise, each party to the conflict must encourage the work of organizations engaged in this task. In addition, article 74 of Protocol I, which develops article 26 of the Fourth Convention, requires the High Contracting Parties and the parties to the conflict to "facilitate in every possible way the reunion of families dispersed as a result of armed conflicts" and to "encourage in particular the work of the humanitarian organizations engaged in this task ...". Since article 74 of Protocol I reaffirms and develops an article found in Part II of the Fourth Convention, it applies to the whole population, including a party's own nationals. 388/

298. While mass transfers and deportations of protected persons from occupied territory are generally prohibited by article 49 of the Fourth Convention, the Occupying Power may undertake evacuation of certain areas for the security of the population or for imperative military reasons (art. 29, second paragraph). In doing so, the Occupying Power must ensure, to the greatest practicable extent, that members of the same family are not separated (third paragraph). Additionally, the Occupying Power must facilitate the proper working of all institutions devoted to the care and education of children and take steps to facilitate the identification of children and the registration of their parentage (art. 50, first and second paragraphs). 389/

299. Article 78 of Protocol I deals with the evacuation to a foreign country by a party to the conflict of children who are not that party's own nationals. 390/ The article imposes limitations on the evacuation of children from occupied territory by an Occupying Power and on the evacuation of alien children who are in the territory of a party to the conflict. 391/ This article also "facilitates repatriation and reunification of dispersed families by obliging the parties to provide identifying data to the Central Tracing Agency of the ICRC." 392/

300. The Fourth Geneva Convention requires each party to the conflict and each Occupying Power to establish an official Information Bureau, which is "responsible for receiving and transmitting information in respect of the protected persons who are in its power" (art. 136, first paragraph). The information received by the Information Bureau and transmitted by it must be of a nature that "make[s] it possible to identify the protected person exactly and to advise his next of kin quickly" (art. 138, first paragraph). The Fourth Convention also requires the establishment of a Central Information Agency for protected persons in a neutral country, a role which often is fulfilled by the ICRC and which includes activities that facilitate the reunification of separated families. 393/

(d) Conclusions

301. Although, in general, present international law adequately protects many family-related needs of internally displaced persons, it does not provide for the reunification of families separated by displacement in situations of tensions, disturbances and disasters. An international instrument should also address the question of reunification of separated families in non-international armed conflicts.

2. Language, culture and identity

302. As a vehicle for the transmission of culture and concepts, language is one of the cornerstones of a person's and a community's identity. An internally displaced population may include persons from minority groups who speak only their own language(s) and cannot communicate in or understand the official or majority spoken language(s). There is a particularly strong need to respect the linguistic heritage of such persons, and to ensure that they can continue to use their own language without interference or discrimination and can be understood by those providing them protective and relief services.

(a) Situations of tensions and disturbances, or disasters

303. Linguistic rights are explicitly protected under international law in only a relatively restricted manner but the use of language is integral to, and thus implicated in, the exercise of certain other fundamental rights and freedoms. Most human rights instruments explicitly include language as one of the grounds upon which States ensure non-discrimination in public and, to at least a certain extent, private affairs. 394/

304. Language as a medium of expression is integrally involved in the exercise of the right to freedom of expression recognized in many human rights instruments. 395/ Generally, freedom of expression can be exercised individually or in a community. In addition, language is integral to a person's exercise of the right to participate in cultural life. Article 27 of the Universal Declaration proclaims every person's right to participate freely in the cultural life of the community. States parties to the ICESCR also recognize the right of all people to take part in cultural life (art. 15 (1) (a)). Paragraph 2 of this article provides that steps required to achieve the full realization of this right shall include "those necessary for the conservation, the development and the diffusion of ... culture". 396/ The Convention on the Rights of the Child also recognizes the right of children to enjoy their culture. 397/

305. An explicit guarantee regarding the use of language by minorities is found in article 27 of the ICCPR. This article provides that:

> "[I]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to ... use their own language." 398/

Article 30 of the Convention on the Rights of the Child contains a similar guarantee for children of minorities and also includes children of indigenous origin. This article stipulates that "[i]n those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, ... or to use his or her own language". 399/ The recent adoption of treaties and declarations at the regional level further reflect a recognition of the rights of minorities to the use of their own languages. 400/ In addition, article 28 of ILO Convention No. 169 401/ concerns, *inter alia*, indigenous language and provides in paragraph 3 that "[m]easures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned".

306. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 402/ inspired by article 27 of the ICCPR, proclaims that States must "protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity". (art. 1). Article 2 grants persons who belong to national or ethnic, religious and linguistic minorities "the right to ... use their own language, in private and in public, freely and without interference or any form of discrimination". 403/ States' obligations in relation to issues of language are elaborated in article 4 of the Declaration. 404/

(b) Non-international armed conflict

307. As a basic right which goes to the core of a person's and community's identity and ability to communicate, the ability to use one's own language should be respected in all circumstances. In fact, the Paris Minimum Standards includes the right of persons to use "their own language" in art. 10 (1) relating to the rights of minorities. Moreover, the rights within this article are among the rights and freedoms regarded as non-derogable in section (C) of the Paris Minimum Standards. 405/

308. During internal armed conflicts, common article 3 requires the humane treatment of all persons who do not or no longer actively participate in hostilities. Such treatment must be accorded "without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria". Although common article 3 does not expressly enumerate language as a ground for non-discrimination, it is indeed arguable that discrimination based on language constitutes a prohibited adverse distinction within the meaning of "any other similar criteria". The inclusion of language in the prohibition in Protocol II of "adverse distinction" in the application of its provisions tends to support this argument. 406/

(c) Inter-State armed conflict

309. During an inter-State armed conflict, article 75 of Protocol I provides, in addition to human rights law, that persons who are in the power of a party to the conflict and "who do not benefit from more favourable treatment

under the Conventions or under this Protocol," must be treated humanely in all circumstances and "shall enjoy, as a minimum, the protection provided by this article without any adverse distinction based upon ... language ...". 407/

(d) Conclusions

310. It can be concluded that the language-related needs of internally displaced persons are protected by international law. However, that protection is inadequate with respect to specific language-related needs of internally displaced persons who are in areas where another language is dominant.

3. Religion

311. Practising one's religion can involve both personal and communal expressions of belief and often represents an essential part of a person's or community's identity. Because displacement disrupts individual and community life, internally displaced persons often encounter obstacles to practising their own religion or beliefs individually and as a community. Moreover, in many cases, such persons experience discrimination due to their religious or other beliefs.

(a) Situations of tensions and disturbances, or disasters

312. International human rights law protects the right to have a religion or belief and to manifest it in worship, observance, practice or teaching, either individually or in community with others. This right is guaranteed to every person in article 18 of the Universal Declaration, and includes freedom to change religion or belief. The right to freedom of thought, conscience and religion is similarly protected in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. 408/ Article 18 of the ICCPR provides:

> "1. Everyone shall have the freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> "2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> "3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
>
> "4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

Article 27 of the ICCPR further provides that in States in which ethnic or religious minorities exist, their members shall not be denied the right to enjoy, communally, their own culture and the right to profess and practise, as a community, their own religion. 409/

313. Under article 14 of the Convention on the Rights of the Child, States parties must respect a child's right to freedom of thought, conscience and religion, subject to appropriate guidance by parents or legal guardians. Non-discrimination on the ground of race and ethnic or national origin in the enjoyment of the right to freedom of thought, conscience and religion is guaranteed in article 5 (d) (vii) of the Racial Discrimination Convention.

314. On a regional level, article III of the American Declaration guarantees every person the right "freely to profess a religious faith, and to manifest and practise it both in public and in private". Furthermore, article 12 of the American Convention and article 9 of the European Convention guarantee every person the right to freedom of conscience and of religion. Article 8 of the African Charter also guarantees "[f]reedom of conscience, the profession and free practice of religion".

315. Under most human rights instruments, the right of freedom to manifest one's religion or beliefs may be subject to restrictions. 410/ Likewise, the Declaration on Intolerance and Discrimination Based on Religion or Belief allows for restrictions, on limited grounds, of the freedom to manifest one's religion or beliefs (art. 1 (3)). Under article 8 of the African Charter, "[n]o one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms".

316. According to article 4 (2) of the ICCPR, the freedom of thought, conscience and religion is non-derogable. The Human Rights Committee has emphasized that no restrictions are allowed on the right to freedom of thought and conscience, the freedom to have or adopt a religion or belief of one's choice, or the freedom from coercion to have or adopt a religion or belief. 411/ Permissible restrictions on the freedom to manifest religion or belief are strictly interpreted. 412/ In addition, the Committee has noted that the freedom to manifest religion or belief includes "such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group". 413/ Furthermore, it has asserted that positive measures may be required to protect the rights of minorities, in particular, to practise their religion. 414/

317. In refugee situations, the practice of religious and ritual activities has been recognized as important to community mental health as well as child development. The Guidelines on Refugee Children stress the need to allow refugees to maintain or resume religious practices and to provide extra food or other material for communal meals and rites of passage. 415/

(b) Non-international armed conflict

318. Human rights guarantees relating to religious and other beliefs remain applicable during non-international armed conflict. The right to freedom of

thought, conscience and religion, as described in article 18 of the ICCPR, and the right to freedom of conscience and religion, described in article 12 of the American Convention, are non-derogable. 416/ Only the freedom to manifest one's religion or belief may be subject to restrictions, where permitted.

319. Article 4 of Protocol II provides that all persons who do not or no longer actively participate in hostilities are entitled to respect for, *inter alia*, their convictions and religious practices. The term "respect" must be read to include a duty to refrain from attacking or abridging the right protected. 417/ Under paragraph 3 (a) of this article, children have the right to receive religious and moral education as desired by their parents or guardians. Furthermore, article 5 of Protocol II grants persons whose liberty has been restricted for reasons of the armed conflict, whether interned or detained, particular religious rights. 418/

(c) Inter-State armed conflict

320. According to article 13 of the Fourth Convention, the provisions of Part II (arts. 13-26) apply to the whole population without any adverse distinction based on, *inter alia*, religion. These provisions cover the whole of the populations of the belligerent countries, including internally displaced persons, and not just civilians who qualify as protected persons. Among these provisions, article 24 states that orphans or children who have been separated from their families because of the armed conflict and who are under 15 must be able to exercise their religion. 419/

321. Another non-discrimination clause is found in article 27 of the Fourth Convention requiring the parties to treat all protected persons with the same consideration regardless of, *inter alia*, religion. Finally, under article 75 of Protocol I, persons who are in the power of a party to the conflict and who do not benefit from more favourable treatment under the Geneva Conventions or Protocol I but who are affected by the armed conflict must be treated humanely without any adverse distinction based on, *inter alia*, religion or belief. In addition, the parties to the conflict must respect the religious practices of such persons. The Protocol also guarantees the right of religious and moral education of children during periods of evacuation (art. 78 (2) of Protocol I).

(d) Conclusions

322. The religious needs of internally displaced persons are sufficiently protected by international law. However, given the essential role of religion and belief in defining personal and cultural identity, a future international instrument should take into account the specific religious-related needs of internally displaced persons.

I. Need to Build Self-Reliance

323. Internally displaced persons are often forced to abandon all their economic activities. As a result, they lose their means of making a living. They become dependent on humanitarian aid to provide them with the basic necessities in order to survive. Displaced persons are thus in need of

opportunities to rebuild self-reliance. This includes opportunities for employment and other economic activity, possibilities for cultivating land and keeping crops and livestock, opportunities for education, access to support networks, having opportunities to participate in governmental and public affairs and receiving and providing information and viewpoints.

1. Opportunity for employment and other economic activities

324. The opportunity for employment or other economic activities, which are essential elements contributing to a person's sense of dignity and independence, constitutes a principal need of internally displaced persons.

(a) Situations of tensions and disturbances, or disasters

325. The opportunity for employment and other economic activities is recognized in human rights law in terms including the right to work, 420/ free choice of employment, just and favourable conditions of work, protection against unemployment, and equal pay for equal work and just and favourable remuneration. Closely related are rights involving trade unions and social security. Article 23 of the Universal Declaration of Human Rights recognizes all these rights and, in addition, proclaims the right of everyone to form and join trade unions for the protection of these interests. Article 25 of the Universal Declaration recognizes the "right to security in the event of unemployment" as an aspect of the right to a decent standard of living. Article 6 of the ICESCR recognizes the right to work, and stipulates that States parties shall take positive steps to achieve the full realization of this right. 421/ Article 7 of the ICESCR recognizes the right of everyone to the enjoyment of just and favourable conditions of work, which include, *inter alia*, fair wages and equal remuneration, and safe and healthy working conditions. 422/

326. The Women's Convention addresses employment opportunity as well as other economic activities in relation to women. Article 11 guarantees women equal rights with men in the field of employment, including the same employment opportunities, equal remuneration, and equal treatment in respect of work of equal value. Article 13 of the Convention calls upon States to eliminate discrimination against women in other areas of economic and social life in order to ensure, *inter alia*, the right to family benefits. Of relevance to economic activities generally is article 15 which stipulates that women are equal with men before the law, and that they, in particular, shall be accorded "equal rights to conclude contracts and to administer property ...".

327. On the regional level, the American Declaration recognizes the right to work and to fair remuneration, and the right to social security in articles XIV and XVI, respectively. Article 26 of the American Convention calls upon States to adopt measures in order to achieve the full realization of the rights set out in the Charter of the OAS as amended by the Protocol of Buenos Aires, which include, *inter alia*, employment-related commitments. 423/ Article 6 of the Protocol of San Salvador lays down the right to work which "includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity". Article 7 deals with just, equitable and satisfactory conditions for work, whereas articles 8 and 9 recognize trade

union rights and the right to social security, respectively. The European Social Charter, in articles 1 to 5, recognizes the right to work, the right to just conditions of work, the right to safe and healthy working conditions, the right to fair remuneration and the right to organize. Article 15 of the African Charter calls for the right to work "under equitable and satisfactory conditions" and to "equal pay for equal work".

328. The UNHCR Executive Committee has recognized the particular need to "[p]rovide all refugee women and girls with effective and equitable access to basic services, including ... education and skills training, and make wage-earning opportunities available to them". 424/ Programmes to improve equal access of refugee women to skills training and income-generating activities are discussed in the Guidelines on the Protection of Refugee Women. 425/

(b) Non-international armed conflict

329. Although the need to build self-reliance often becomes more acute in situations of armed conflict, humanitarian law dealing with non-international armed conflict does not expressly address the issue of opportunity for employment and other economic activity. However, article 5 of Protocol II states that persons whose liberty has been restricted for reasons related to the armed conflict, whether interned or detained, shall, if *made* to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

(c) Inter-State armed conflict

330. Several provisions in the Fourth Geneva Convention deal with the issue of employment. Article 39 of the Fourth Convention, applicable to aliens in the territory of a warring party, states that protected persons 426/ who have lost their employment as a result of the war shall be granted the opportunity to find new employment. The article further states that "[w]here a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents." Article 40 of this Convention lays down the grounds for compelling protected persons to work and provides for minimum safeguards regarding their working conditions.

331. Articles 51 and 52 of the Fourth Convention place certain restraints on an Occupying Power in connection with the employment and work of protected persons. Article 51 prohibits an Occupying Power, *inter alia*, from compelling protected persons "to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country". Article 52 states that "measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited". 427/

(d) Conclusions

332. Human rights law guarantees a range of employment-related rights, including the right to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, and just and favourable remuneration. Humanitarian law is more limited on the subject. It would be useful if an international instrument would address the special situations of internally displaced women. It should also stress that internally displaced persons are guaranteed equal opportunity for employment and other economic activity.

2. Education

333. Education is essential to developing a person's sense of identity and human dignity. Nevertheless, internally displaced persons, in particular children, often are deprived of education, either because there are no or insufficient educational facilities in the area to which they have temporarily relocated or because alternative learning settings are lacking. Also, parents of displaced children may be unable to pay required school fees, or it may simply be too dangerous for the children to travel to school. Moreover, internally displaced adults may need specialized education, particularly when they have lost their sources of income and livelihood. Such adult education should or could include survival skills training, job skills training, leadership training, and training in conflict resolution.

(a) Situations of tensions and disturbances, or disasters

334. The fundamental character of the need for education is reflected in the wide range of international instruments recognizing the right to education on a non-discriminatory basis. Article 26 (1) of the Universal Declaration provides for the right to education for everyone. It further states that elementary education shall be compulsory and free, while "[t]echnical and professional education shall be made generally available". Likewise, States parties to the ICESCR recognize the right to education for all (art. 13 (1)), and, with a view to achieving the full realization of this right, recognize that primary education shall be compulsory and free 428/ while "[f]undamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education" (art. 13 (2) (a) and (d)). 429/ Further commitments are made to achieving the general availability and accessibility of secondary education, including technical and vocational secondary education, and equal accessibility to all of higher education (art. 13 (2) (b) and (c) of the ICESCR).

335. The Women's Convention requires States parties to take appropriate measures in order to ensure equal rights and access to education for men and women, including career and vocational guidance, continuing education and adult and functional literacy programmes. 430/ Furthermore, a prohibition of discrimination on the basis of race in the enjoyment of education and training is proclaimed in the Racial Discrimination Convention (art. 5 (e) (v)). The UNESCO Convention against Discrimination in Education 431/ forbids discrimination at all levels of education. 432/ Furthermore, States parties to this Convention undertake not to allow "any

differences of treatment by public authorities between nationals" except on the basis of merit or need with regard to school fees, scholarships or other grants (art. 3 (c)). Subject to certain conditions, States parties to that Convention also agree that it is essential to recognize the right of members of national minorities to "carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language" (art. 5). 433/

336. The importance of promoting primary education for children is similarly evidenced in articles 28 and 29 of the Convention on the Rights of the Child. 434/ Under article 28, States parties not only recognize the child's right to education, but also commit themselves, with a view to achieving this right progressively and on the basis of equal opportunity, to "[m]ake primary education compulsory and available free to all" and "[m]ake educational and vocational information and guidance available and accessible to all children" (paras. (1) (a) and (d)). Finally, article 29 (1) of the Convention sets forth the aims of education, which include the "preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin" (art. 29 (1) (d)). According to article 26 (3) of the Universal Declaration, article 13 (3) of the ICESCR, article 5 (1) (b) of the Convention against Discrimination in Education and article 18 (4) of the ICCPR, States parties commit themselves to respect the liberty of parents to ensure the religious and moral education of their children in accordance with their own convictions. The Human Rights Committee has noted that States parties to the ICCPR are obliged to provide children with a level of education that will enable them to enjoy their rights under that treaty, in particular the right to freedom of opinion and expression. 435/ More generally, participating States at the 1995 World Summit for Social Development committed themselves to the "universalization of basic education, which includes early childhood education, primary education and education for the illiterate, in all communities", and to the "full and equal access to education for girls and women". 436/

337. On the regional level, article XII of the American Declaration recognizes the right of every person to an education "that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society". This article additionally includes the right of every person to receive a free primary education, at least, as well as the right to equality of opportunity. Article 13 of the Protocol of San Salvador reiterates the right to education for everyone. 437/ Unlike other instruments, the First Protocol to the European Convention articulates the right to education in a negative way by providing in article 2 that "[n]o person shall be denied the right to education". 438/ Finally, article 17 (1) of the African Charter proclaims every individual's right to education. 439/ Article 12 (4) of the American Convention grants to parents an express right to provide for the religious and moral education of their children. Article 2 of the First Protocol to the European Convention requires States to respect the "right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

338. The UNHCR Executive Committee has frequently drawn attention to the fundamental right of refugee children to education 440/ and the link between education and durable solutions. 441/ Recently, the Executive Committee requested the High Commissioner "to continue her efforts to give higher priority to the education of all refugee children, ensuring equal access for girls, [and] giving due regard to the curriculum of the country of origin". It also urged UNHCR "to identify educational requirements in the early stages of an emergency so that prompt attention may be given to such needs". 442/ Of particular concern are measures to ensure equal opportunity for refugee girls as for boys, equal access of refugee women to adult education, and skills training to ensure their ability to support themselves and their families. 443/ Accordingly, the Executive Committee recently urged the High Commissioner "to undertake initiatives for refugee women in the areas of leadership and skills training, legal awareness, and education". 444/

(b) Non-international armed conflict

339. The ICESCR, the Protocol of San Salvador, the African Charter and the Convention on the Rights of the Child all contain provisions regarding education. As previously noted, none of these instruments contains a derogation clause. 445/

340. Common article 3 is silent on the education of children during internal armed conflicts. However, in setting forth fundamental guarantees, article 4 of Protocol II states that children shall be provided with the care and aid they need and, in particular, that they shall receive "an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care" (art. 4 (3) (a)).

(c) Inter-State armed conflict

341. In addition to the human rights law mentioned above, the Fourth Geneva Convention contains certain provisions which are relevant to the education of children during inter-State hostilities and occupation situations. The humanitarian guarantees of Part II of the Fourth Convention, which encompass articles 13 through 26, cover the whole of the populations of the belligerent countries, not just civilians who qualify as protected persons, and thus apply to all internally displaced civilians within these countries. Specifically, article 24 of the Fourth Geneva Convention requires States to take the necessary measures "to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that ... the exercise of ... their education [is] facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition". 446/ Article 78 (2) of Protocol I similarly requires "the greatest possible continuity" in education for children evacuated under the terms of paragraph 1 of that article.

342. In cases of occupation, article 50 of the Fourth Convention provides that the Occupying Power, in cooperation with national and local authorities, shall "facilitate the proper working of all institutions devoted to the care

and education of children." If local institutions are inadequate, the Occupying Power must "make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend" (art. 50, third paragraph of the Fourth Convention). 447/

(d) Conclusions

343. Although the right to education, as guaranteed by international human rights law, can be invoked by internally displaced persons, an international instrument should deal with this issue by addressing the specific educational needs of the internally displaced. It should guarantee the right to education for every internally displaced child, regardless of the family situation, and provide for the possibility of education and training for adults where necessary and appropriate.

3. Participation in community affairs

344. It is important that internally displaced persons are able to gather together and form groups in order to exercise a minimum amount of control over their lives and, where possible, to develop or maintain a sense of community. This is particularly true while they are resettled (temporarily) in camps. In such situations, their ability to assemble and associate is necessary to permit them to participate in supply distribution, pass on news and information, form camp administration committees, and maintain basic social interaction. Support networks, as well as consultation and participation in planning and programming of various aspects of camp life, are of particular relevance to women as they generally form a disproportionately large number within the group of internally displaced persons but often confront obstacles to participation in camp decision-making.

(a) Situations of tensions and disturbances, or disasters

345. The rights to freedom of peaceful assembly and association are recognized in virtually all principal universal human rights instruments, including article 20 (1) of the Universal Declaration, 448/ and they can be invoked by internally displaced persons. Article 21 of the ICCPR provides that "[t]he right of peaceful assembly shall be recognized." Similarly, article 22 of the ICCPR states that "[e]veryone shall have the right to freedom of association with others including the right to form and join trade unions for the protection of his interests". However, both rights are subject to restrictions (art. 22 (2)). 449/ The rights of the child to freedom of association and peaceful assembly are enshrined in article 15 (1) of the Convention on the Rights of the Child. 450/

346. Regionally, the rights of association and assembly are guaranteed in the Inter-American, European, and African human rights systems in a more detailed manner than those in the ICCPR. 451/

(b) Non-international and inter-State armed conflicts

347. During an armed conflict, albeit non-international or inter-State in nature, States parties to the principal universal and regional human rights treaties may place increasing restrictions on and even temporarily suspend the rights to freedom of association and assembly. The suspension of these rights, however, must meet the criteria for lawful derogation set forth in the applicable treaties. 452/

348. Neither the Geneva Conventions, including common article 3, nor the two Protocols contain any provisions that either guarantee or otherwise protect the rights to freedom of association and assembly.

(c) Conclusions

349. As humanitarian law does not address the issue of freedom of association, such protection must be wholly derived from the aforementioned human rights instruments which, however, may be derogated from during armed conflict. Therefore, an international instrument should deal with the association-related needs of internally displaced persons.

4. Participation in governmental and public affairs

350. Amidst the many deprivations they face, internally displaced persons often are stripped of the opportunity to participate in government on a local or national basis. This denial may be enhanced by the fact that they have lost their identification papers and/or their property. The ability to participate in governmental and public affairs can enable internally displaced persons to influence and possibly ameliorate their own situation of displacement.

(a) Situations of tensions and disturbances, or disasters

351. The right to political participation is recognized in several international human rights instruments as a right enjoyed by citizens. Article 21 of the Universal Declaration guarantees to everyone, within his or her country, the right to take part in government and to express political will through universal and equal suffrage. Likewise, article 25 of the ICCPR requires that every citizen shall have the right and the opportunity to participate in the conduct of public affairs and to vote and be elected at genuine periodic elections. Furthermore, this article requires that this right be guaranteed without unreasonable restrictions and without any of the distinctions enumerated in article 2 of the ICCPR. 453/

352. The Women's Convention provides in article 7 that States parties shall ensure to women, on equal terms with men, the right to political participation. Furthermore, States parties to the Convention on the Political Rights of Women recognize the principle of equality between men and women, without any discrimination, regarding the enjoyment and exercise of certain rights pertaining to the right to political participation, including the ability to vote in elections, to be eligible for election to publicly elected bodies, and to hold public office and exercise public functions. 454/ Under the Declaration on the Rights of Persons Belonging

to Minorities, persons belonging to national or ethnic, religious and linguistic minorities have the right to participate effectively in public life as well as in decisions "on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner that is not incompatible with national legislation." 455/

353. In 1991, the United Nations General Assembly adopted a resolution underscoring the importance of the right to political participation for the enjoyment of other human rights. The resolution declared that "the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms ...". 456/ The 1985 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women recognized the need for Governments to "ensure equality of [political] participation by women ... [and] effectively secure the participation of women in the decision-making processes at a national, State and local level ...". 457/

354. Regionally, the American Declaration grants everyone having legal capacity the right to participate in the government of his or her country and to take part in popular elections (art. XX of the American Declaration). Article 23 of the American Convention states that every citizen shall enjoy the right and opportunity to participate in public affairs and to vote and be elected in genuine periodic elections. Under article 3 of the First Protocol to the European Convention, States parties "undertake to hold free elections at reasonable intervals by secret ballots, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". Finally, article 13 of the African Charter guarantees to every citizen the right to participate freely in the Government of his country.

355. Restrictions on the right to political participation are limited in scope and number. As described above, the ICCPR prohibits "unreasonable restrictions" (art. 25). Such restrictions must be proportional and justified by the overall political situation in the country concerned. 458/ Under article 23 (2) of the American Convention, a State party may regulate the exercise of the right to political participation "only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings".

(b) Non-international and inter-State armed conflicts

356. During situations of armed conflict, whether non-international or inter-State in nature, human rights law remains applicable, but it is subject to increased restrictions and, where permitted, derogations. The right to political participation is made non-derogable under the American Convention. 459/ The Paris Minimum Standards declare this right to be non-derogable as well. 460/

357. Humanitarian law, notably the Fourth Geneva Convention and Protocols I and II, does not contain any provisions with regard to the right to political participation.

(c) Conclusions

358. A future international instrument should stress that internally displaced persons do not lose their right to political participation because they had to leave their homes, and the means for their participation, including access to voter registration procedures, must be safeguarded.

IV. NEED FOR INTERNATIONAL PROVISION OF PROTECTION AND ASSISTANCE

A. Need to receive and to provide assistance

359. One of the most acute needs of internally displaced persons is safe access to those essentials which are indispensable to their survival and to a minimum standard of living. Thus, the possibility to seek and receive humanitarian assistance is, itself, critical to the ability to meet the needs of internally displaced persons.

1. Legal obligations in general

360. It is primarily the responsibility of the States to provide humanitarian assistance to their internally displaced persons. Therefore, the Government of a State that acts in good faith will attempt to protect and provide life-sustaining assistance to its internally displaced citizens, and, if the magnitude of the problem exceeds its relief capabilities, will call on the international community to perform these humanitarian functions. If, however, a Government is unable or unwilling to provide these services and does not request, or rejects, an offer of humanitarian relief by competent external organizations, the questions arise whether internally displaced persons have a right under international law to request and receive protection and assistance from the international community and/or international humanitarian and relief organizations and whether the same have a right to obtain access to persons in need of protection and assistance.

(a) Situations of tensions and disturbances, or disasters

361. The right of internally displaced persons to request and receive protection and assistance from their Government and the duty of their Government to provide such services necessarily flow from the essential nature of the international law of human rights as enshrined in the Charter of the United Nations, the International Bill of Human Rights, and other universal and regional instruments.

362. In addition, under Article 1 (3) of the Charter, States Members of the United Nations have a duty to cooperate "in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all ...". 461/ It can be argued that this duty to cooperate is referenced as the leading basis for two General Assembly resolutions reaffirming the primary responsibility of States to provide assistance to victims of natural disasters and similar emergencies that occur within their territory. 462/ This duty implies a corollary obligation of States to receive international assistance when offered and needed. 463/

363. The right to life is the most fundamental universally recognized human right. 464/ As previously noted, it requires that States adopt positive measures if necessary for its protection. 465/ The right of internally displaced persons to seek and receive protection and life-sustaining assistance from their Government is a necessary implication of States' recognition of the right to life. Accordingly, the Government of a State which withholds such assistance from its internally displaced citizens should be seen as violating any of the principal universal or regional human rights instruments, to which it is a party, that guarantee the right to life.

364. In the area of subsistence rights, a State party to the ICESCR has additional obligations to "take steps, individually and through international assistance and cooperation ... to the maximum of its available resources, with a view to achieving progressively the full realization of [the treaty's] rights ..." (art. 2 (1)). Thus, the maximum of a State party's available resources includes both "the resources existing within a State and those available from the international community through international cooperation and assistance". 466/ Under article 11 of the ICESCR, States parties also recognize the "essential importance of international cooperation based on free consent" for the realization of "the right ... to an adequate standard of living, ... including adequate food, clothing and housing". The critical role of international cooperation in facilitating full realization of the treaty's rights is underscored in articles 15, 22 and 23 and the interpretative comments of the Committee on Economic, Social and Cultural Rights. 467/ Indeed, the Committee has emphasized "that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for ... the realization of economic, social and cultural rights is an obligation of all States". 468/

365. Thus, it can be argued that States parties to the ICESCR have a duty to at least refrain from unreasonably denying offers of international assistance in cases of imminent humanitarian problems seriously affecting the subsistence needs of internally displaced persons and, perhaps, an obligation to accept reasonable offers. This duty can be considered to be in the nature of an immediate "obligation of conduct", which helps achieve a progressively realized "obligation of result". 469/ A refusal to accept an offer of international cooperation and assistance where necessary to realizing subsistence rights recognized under the treaty could be considered to constitute, at the least, "a deliberately retrogressive measure" 470/ and, at most, a breach of treaty obligations.

366. The international community, however, has been cautious to recognize a duty of a State to accept offers of humanitarian assistance. In various resolutions, the General Assembly has reaffirmed the primary responsibility of States to assist the victims of natural disasters and similar emergencies that occur within their territory. 471/ In addition, in resolutions 43/131 and 45/100, the General Assembly has declared that the abandonment of the victims of such situations without humanitarian assistance "... constitutes a threat to human life and an offence to human dignity". 472/ These resolutions invite States to facilitate the work of international and non-governmental organizations in implementing humanitarian

assistance, in particular by supplying food, medicines and health care. 473/ They implicitly recognize the right, under the international law of States, of international organizations and non-governmental organizations to offer humanitarian assistance to other States in case of disaster or similar emergency, and they support the view that such offers do not constitute unlawful interference in the internal affairs of these States. However, these resolutions also reaffirm that the right of external actors to provide such assistance to victims in other States depends on the consent of these States. Thus, the Guiding Principles in the annex to General Assembly resolution 46/182, while declaring the importance of humanitarian assistance, state that "[t]he sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country". 474/

367. During situations of tensions and disturbances, the ICRC is empowered by the Statutes of the International Red Cross and Red Crescent Movement with a right of initiative to offer its services to assist the victims of such situations, 475/ including displaced persons. However, a Government is not obliged to accept the ICRC's offer of services and, thus, may legitimately deny the ICRC access to the country.

368. When faced with peacetime disasters to which they cannot adequately respond, Governments routinely issue appeals for international assistance to the victims of disasters through their national Red Cross or Red Crescent Society to the International Federation of Red Cross and Red Crescent Societies. The International Federation then organizes, coordinates and directs international relief actions by national societies and other components of the International Red Cross and Red Crescent Movement. In 1993, the Council of Delegates of the International Red Cross and Red Crescent Movement approved a Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief. 476/ Principle 1 of the Code of Conduct states, in pertinent part, as follows:

> "The right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries. As members of the international community, we recognise our obligation to provide humanitarian assistance wherever it is needed. Hence the need for unimpeded access to affected populations, which is of fundamental importance in exercising that responsibility.
>
> "...
>
> "When we give humanitarian aid it is not a partisan or political act and should not be viewed as such."

(b) Non-international armed conflict

369. In addition to what has been stated above, there are only a few provisions in humanitarian law instruments which deal with relief actions on behalf of victims of non-international armed conflicts. Common article 3, which is applicable to all internal hostilities, expressly states that

> "An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict."

370. Over the years, the ICRC has developed a particular expertise and operational capability to assist and protect victims of internal armed conflicts. The broad range of "traditional" activities or functions it normally undertakes for these victims includes emergency medical assistance to wounded and sick civilians; providing emergency food, drinkable water and other essential supplies to the civilian population; protection of civilians; visits to detainees; searches for missing persons; and re-establishing contact between family members separated by the conflict. These activities are extended to internally displaced civilians, assuming the ICRC has access to such persons. Although the ICRC has a clear legal mandate to offer these services, the parties to the conflict, most particularly, the established Government, have no express legal obligation to accept the offer, and Governments, especially, have occasionally refused to do so.

371. In the event the internal hostilities are also governed by Protocol II, article 18 (1) of that instrument provides that "[r]elief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict". Although this provision does not mention the ICRC, that organization none the less continues to derive from common article 3 a legal basis to offer its services to the parties to the conflict. Like common article 3, article 18 does not state that the "offer of services" by relief societies and, implicitly, the ICRC, must be accepted. However, the authors of one authoritative commentary on the Protocols write "... if the article is to have any meaning (and it should be interpreted in this way), the party to which the service is offered must at least give sympathetic consideration to the offer". 477/

372. Article 18 (2) of Protocol II 478/ provides for relief actions as follows:

> "If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned."

By stating that such relief actions "shall be undertaken", this provision effectively limits a party's discretion to withhold its consent thereto. It has been noted, in this regard, that the party may refuse relief actions "... only for valid reasons, not for arbitrary and capricious ones". 479/ According to the wording of article 18 (2), only the consent of the "High Contracting Party concerned", i.e. the established Government, is required for relief actions, not that of rebel forces "... even if the relief action takes place in an area under their control". 480/ Since article 18 does not stipulate how the High Contracting Party must manifest its consent to relief operations, it clearly may be made expressly and publicly, or, presumably, by way of "[p]rivate assurances or an attitude which can in good faith be construed as acquiescence". 481/ 482/

(c) Inter-State armed conflict

373. The Fourth Geneva Convention and Protocol I contain detailed provisions for relief actions on behalf of the civilian populations in both occupied and non-occupied territories during inter-State hostilities. Various other provisions in the Fourth Convention deal with collective or individual relief to civilians during situations of occupation and internment. 483/

374. Article 23 of the Fourth Convention provides for the consignment of basic supplies to relieve the suffering of the whole of the civilian populations of the warring countries. As such, it applies to all internally displaced civilians whether or not they are protected persons under the Convention. Article 23 requires each contracting party to

> "allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases."

Although article 23 states that "[s]uch consignments shall be forwarded as rapidly as possible", it authorizes the placement of restrictive conditions on the free transit of relief supplies.

375. Article 70 of Protocol I, which has been referred to as the "new general regulation for relief in non-occupied territories", 484/ is less restrictive than article 23 of the Fourth Convention. It removes several key deficiencies found in this article, principally by broadening the categories of relief supplies 485/ and effectively eliminating the restrictive conditions on the passage of relief stipulated therein. 486/ The basic new rule for relief actions is stated in paragraph 1 of article 70 as follows:

> "If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken,

> subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection."

376. Paragraph 2 of article 70 of Protocol I provides that each contracting party and the parties to the conflict "... shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party". With regard to potential donor States, this provision, as it embodies the basic principle of humanity, has been interpreted as "... creating a duty on those States in a position to do so to make every reasonable effort to contribute to such relief actions, to undertake such actions where appropriate and to allow and facilitate actions which private organizations of that country are prepared to undertake". 487/ As in the case of article 18 of Protocol II, the party whose civilians are the object of such relief actions cannot arbitrarily refuse to accept that relief. 488/ Moreover, article 70 (3) of Protocol I allows transit States to impose conditions on the transit of relief consignments through their territory, 489/ but prohibits them from diverting such consignments from the purpose for which they are intended or delaying their forwarding, "except in cases of urgent necessity in the interest of the civilian population concerned" (para. 3 (c)). In addition, article 70 (4) of Protocol I requires the parties to the conflict to "protect relief consignments and facilitate their rapid distribution". Furthermore, paragraph 5 of article 70 requires that all relevant parties must encourage and facilitate "effective international coordination of the relief actions referred to in paragraph 1".

377. During an occupation, the Fourth Convention places primary responsibility on the Occupying Power to meet the basic needs of the civilian population. Specifically, article 55 of that instrument states: "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate." Article 69 of Protocol I, applicable to occupied territories, simply expands the list of goods that the Occupying Power is obliged to supply the civilian population. 490/

378. In the event that all or part of the civilian population in an occupied territory is inadequately supplied, article 59 of the Fourth Convention declares that the Occupying Power "... shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal". Such operations for the provision of food, medical supplies and clothing may be undertaken by States or impartial humanitarian organizations such as the ICRC (second paragraph). Furthermore, contracting parties must allow free passage to these shipments (but may subject them to, *inter alia*, searches and regulations as to times and routes), and they must

guarantee their protection (third and fourth paragraphs). Article 60 of the Fourth Convention makes clear that the provision of such humanitarian relief "... shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55 ... and 59". It also enjoins the Occupying Power from diverting relief shipments from the intended purposes, except "in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power". While article 61, first and second paragraphs, provide for the distribution and exemption from taxation of relief consignments, the third paragraph states that "[a]ll Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories". Additionally, article 69 (2) of Protocol I requires that relief actions "shall be implemented without delay".

379. In cases of international armed conflicts, article 10 of the Fourth Geneva Convention allows the ICRC and any other impartial humanitarian organization to undertake protection and assistance to civilians, including internally displaced persons, provided the parties to the conflict have consented. Furthermore, when no substitute for a Protecting Power can be arranged, article 11 of the Fourth Convention and article 5 of Protocol I authorize the ICRC to assume the humanitarian functions performed by Protecting Powers under the Convention. Article 81 of Protocol I effectively broadens the provisions of the Geneva Conventions by requiring the warring parties to grant the ICRC all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Geneva Conventions and the Protocol in order to ensure protection and assistance to the victims of conflicts. Article 81 additionally states that the ICRC "may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned". 491/ According to article 143 of the Fourth Geneva Convention, the ICRC is formally entitled to have access to all protected persons within the meaning of that Convention. 492/

(d) Conclusions

380. It can be concluded that in situations of tensions and disturbances, or disasters, existing international law recognizes the right of internally displaced persons to request and receive protection and assistance from their Government and, to a certain extent, the right of international actors to offer humanitarian services on their behalf to affected Governments and authorities. However, as a corresponding duty of States to accept assistance from humanitarian organizations when they are unable or unwilling to provide such aid has not been explicitly recognized yet, a future international instrument on internally displaced persons should address this issue.

381. Regarding situations of armed conflict, whether non-international or inter-State in character, a future international instrument applicable to internally displaced persons should reaffirm the right of such persons to seek and receive assistance and protection from their Government and the corresponding duty of their Governments to provide such services; affirm the right of States and other competent external actors to offer humanitarian relief to displaced persons in other States in such situations; recognize the duty of States not to arbitrarily refuse offers of life-sustaining relief by

external actors when these States, for whatever reasons, are unable or unwilling to provide internally displaced persons with basic necessities; and reaffirm the duty of States to grant and facilitate the free passage of humanitarian relief to internally displaced persons wherever they are located. 493/

2. Relevant Security Council actions

(a) Analysis

382. Whether States have an obligation to allow the activities of international humanitarian organizations in their territory and whether the international community has a right to provide humanitarian protection and assistance without the consent of the Government concerned are questions which are the subject of ongoing study and debate within the United Nations, as well as by States, relief providers and others concerned with the plight of internally displaced persons. In recent years, the United Nations Security Council has made several key decisions relating to humanitarian assistance and protection based on its authority under the Charter. Pursuant to Article 39 of Chapter VII, the Security Council is empowered to determine the existence of "any threat to the peace, breach of the peace or act of aggression" and to make recommendations or decide "what measures shall be taken ... to maintain or restore international peace and security". Many of these resolutions refer to situations concerning internally displaced persons.

383. In resolution 688 (1991), the Security Council stated, for the first time:

> "*Reaffirming* the commitment of all Member States to the sovereignty, territorial integrity and political independence of Iraq and of all States in the area,
>
> "...
>
> "3. *Insists* that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations." 494/

384. Since then, the Security Council has repeatedly reaffirmed the sovereignty, territorial integrity and political independence of States with humanitarian problems but, at the same time, has insisted on or called for "immediate" or "unimpeded" access by international humanitarian organizations to all those in need of assistance, including internally displaced persons. 495/ Similarly, in resolution 853 (1993), the Security Council:

> "*Expressing once again its grave concern* at the displacement of large numbers of civilians in Azerbaijan and at the serious humanitarian emergency in the region,

> "*Reaffirming* the sovereignty and territorial integrity of Azerbaijan and of all other States in the region,
>
> "...
>
> "11. *Calls once again* for unimpeded access for international humanitarian relief efforts in the region, in particular in all areas affected by the conflict, in order to alleviate the increased suffering of the civilian population, and reaffirms that all parties are bound to comply with the principles and rules of international humanitarian law." 496/

385. In other resolutions, the Security Council called upon all parties to the conflict to cooperate with the United Nations, its agencies and other humanitarian organizations in order to facilitate humanitarian assistance to those in need. 497/ In paragraph 3 of its resolution 859 (1993), the Security Council demanded

> "that all concerned facilitate the unhindered flow of humanitarian assistance, including the provision of food, water, electricity, fuel and communications, in particular to the safe areas in Bosnia and Herzegovina."

386. In the case of Somalia, the Security Council, in resolution 794 (1992), elaborated on the right to seek and the duty to provide international humanitarian relief in the context of disintegration of governmental authority by, *inter alia*, responding to "the urgent calls from Somalia for the international community to take measures to ensure the delivery of humanitarian assistance". 498/ The Security Council determined that "the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security". 499/ Acting under Chapter VII of the Charter, the Security Council authorized the Secretary-General and the Member States of the United Nations "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia". 500/

387. Of direct relevance for internally displaced persons is resolution 929 (1994) concerning the situation in Rwanda. Here, the Security Council:

> "*Recognizing* that the current situation in Rwanda constitutes a unique case which demands an urgent response by the international community,
>
> "*Determining* that the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region,
>
> "...
>
> "2. *Welcomes* ... the offer by Member States to cooperate with the Secretary-General in order to achieve the objectives of the United Nations in Rwanda through the establishment of a temporary

> operation ... aimed at contributing, in an impartial way, to the security and protection of displaced persons, refugees and civilians at risk in Rwanda ...;
>
> "3. Acting under Chapter VII of the Charter of the United Nations, *authorizes* the Member States cooperating with the Secretary-General to conduct the operation referred to in paragraph 2 above using all necessary means to achieve the humanitarian objectives set out in subparagraphs 4 (a) and (b) of resolution 925 (1994)." 501/

The humanitarian objectives set out in subparagraphs 4 (a) and (b) of resolution 925 (1994) are as follows:

> "(a) Contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas; and
>
> "(b) Provide security and support for the distribution of relief supplies and humanitarian relief operations." 502/

388. In Somalia as well as in Rwanda, the Security Council included the task of providing assistance and protection to internally displaced persons in the mandate of United Nations peace-keeping troops. 503/

(b) Conclusions

389. Two conclusions can be derived from this recent practice of the Security Council: (a) In situations of non-international 504/ or inter-State armed conflict threatening peace and security in a region, States are obliged to grant United Nations agencies and international humanitarian organizations access to civilians, including internally displaced persons in need of humanitarian relief, if the State concerned is unable or unwilling to provide such assistance. However, violations of this obligation do not entitle other States or international humanitarian organizations to intervene and distribute relief against the will of the country concerned; (b) only in very exceptional cases of a very serious humanitarian crisis which in itself contributes to a threat to international peace and security 505/ can the Security Council, on the basis of Chapter VII of the Charter, authorize States to use "all necessary means", including armed force, to give international humanitarian organizations access to persons in need, including internally displaced persons. Thus, on the one hand, there is a clear obligation of States to permit humanitarian assistance and protection to their civilian and internally displaced population if they themselves are unable or unwilling to provide such aid; on the other hand, outside of exceptional cases involving a threat to international peace and security, there is no right to force a State to accept receipt of this aid if it has been refused or denied.

B. Needs of relief workers and organizations

1. Access

390. In order to deliver humanitarian assistance, relief workers and their organizations must be able to travel to, and have access to, the internally displaced. They also need to establish and maintain communications with the displaced, either by radio or telephone.

(a) Situations of tensions and disturbances, or disasters

391. Conventional human rights law does not provide explicitly for access by relief workers to the victims of internal displacement who are in need of humanitarian assistance. In contrast, various General Assembly and Security Council resolutions, discussed in other sections, expressly address this crucial aspect of humanitarian assistance. 506/ In addition, the 1993 Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief 507/ underscores the importance of access. Principle 1 stresses the need for "unimpeded access to affected populations", and recommendation 2 of annex I provides, in relevant part, as follows:

> "If NGHAs [non-governmental humanitarian agencies] are to act in full compliance with their humanitarian principles, they should be granted rapid and impartial access to disaster victims, for the purpose of delivering humanitarian assistance. It is the duty of the host Government, as part of the exercising of sovereign responsibility, not to block such assistance, and to accept the impartial and apolitical action of NGHAs.
>
> "Host Governments should facilitate the rapid entry of relief staff, particularly by waiving requirements for transit, entry and exit visas, or arranging for these to be rapidly granted." 508/

(b) Non-international armed conflict

392. As previously discussed, the ICRC has a right to offer its services, as do other humanitarian organizations, to the parties to internal armed conflicts governed by Protocol II and/or common article 3. However, both article 18 of Protocol II and common article 3 are silent on the question of access by relief workers to victims when the party(ies) concerned have accepted their organizations' offer of humanitarian relief. Consent to such access, which is indispensable to the provision of relief, must be presumed from the acceptance of the organization's offer of humanitarian services.

(c) Inter-State armed conflict

393. Articles 10, 509/ 30, 510/ 63 511/ and 142 512/ of the Fourth Geneva Convention address various aspects of relief activities for civilians undertaken by the ICRC and other humanitarian organizations. Furthermore, article 143 of the Fourth Convention grants delegates of the ICRC the same prerogatives as it gives representatives of the Protecting

Power to visit all places where protected persons are interned, detained and work, and to interview such persons "without witnesses, personally or through an interpreter" (second paragraph).

394. Article 81 of Protocol I elaborates on the activities of such organizations and provides in paragraph 1 that the parties to the conflict must grant the ICRC

> "all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions and this Protocol in order to ensure protection and assistance to the victims of conflicts; the International Committee of the Red Cross may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned."

Paragraphs 2 and 3 of this article concern humanitarian activities by national Red Cross (Red Crescent, Red Lion and Sun) societies. Finally, article 81 (4) provides, with respect to other humanitarian organizations, that

> "[t]he High Contracting Parties and the Parties to the conflict shall, as far as possible, make facilities similar to those mentioned in paragraphs 2 and 3 available to the other humanitarian organizations referred to in the Conventions and this Protocol which are duly authorized by the respective Parties to the conflict and which perform their humanitarian activities in accordance with the provisions of the Conventions and this Protocol."

The reference to the Conventions implies that such organizations must perform their humanitarian functions in an impartial manner, without any distinction based on nationality, race, religion, social conditions or political orientation. 513/

(d) Conclusions

395. Because human rights and humanitarian law instruments do not expressly ensure relief workers access to victims in all recognized situations, a future international instrument applicable to internally displaced persons should guarantee them such access.

2. Safety

396. If they are to effectively undertake relief actions in safety on behalf of displaced persons, relief workers and their organizations must be respected and protected. First and foremost, relief personnel, their means of transportation and relief supplies must be safe from attack. These workers also must be able to assist and protect the internally displaced without hindrance or other unwarranted interferences. 514/ Medical and religious personnel, as well as their units, transports and facilities, must also receive protection to carry out their specialized assistance.

(a) Situations of tensions and disturbances, or disasters

397. While attacks and threats of violence against relief workers have occurred during tensions and disturbances, and disasters, such acts are not commonplace. In these situations, relief personnel derive legal protection against such acts by State agents directly from human rights law. 515/

398. The Convention on the Safety of United Nations and Associated Personnel 516/ applies to United Nations and associated personnel 517/ deployed within a United Nations operation, 518/ except those under Chapter VII of the Charter in which they act as combatants. 519/ It is important to note that unless relief workers qualify as "United Nations personnel" or "associated personnel" as defined in the Convention, they do not enjoy the protections, privileges and immunities extended to these persons under that treaty.

(b) Non-international armed conflict

399. The Convention on the Safety of United Nations and Associated Personnel also applies in situations of non-international armed conflict. In contrast, neither common article 3 nor Protocol II contains provisions expressly requiring the parties to the conflict to respect and protect relief personnel, as such. The protection of these workers from attack and other acts of violence, therefore, must be based on their status as civilians and the neutral and impartial nature of their humanitarian enterprise. Their provision of traditional relief activities to the victims of internal hostilities cannot be regarded in any way as acts hostile or harmful to any party to the conflict. Thus, the humanitarian activities of relief workers cannot entail forfeiture of their immunity from direct attack or justify their trial and punishment by any belligerent. Attacks against such persons would flagrantly violate the injunction of acts of violence against persons taking no active part in the hostilities contained in common article 3.

400. In contrast to relief workers, articles 9 to 12 of Protocol II contain rules applicable to medical and religious personnel, their duties and means of transportation. 520/ Article 9 (1) protects medical and religious personnel against violence and attacks by requiring that they "shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission." 521/ Under paragraph 2 of this article, medical personnel may not be compelled to grant priority treatment to any person, except on medical grounds.

401. Article 11 of Protocol II similarly mandates that medical units and transports 522/ "shall be respected and protected at all times and shall not be the object of attack". 523/ The second paragraph of this article states that their protection from attack shall only terminate in the event they "are used to commit hostile acts, outside their humanitarian function", provided "a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded". Finally, the distinctive emblem displayed by medical and religious personnel, medical units and medical transports must be respected in all circumstances (art. 12 of Protocol II). 524/

402. The Security Council, in two resolutions concerning the civil war in Angola, condemned the laying of mines and other actions jeopardizing the security of relief workers and called upon both parties to the conflict to guarantee safe distribution of humanitarian relief. 525/

(c) Inter-State armed conflict

403. Similar to the law applicable to internal hostilities, the Fourth Geneva Convention has no provisions rendering general protection for relief personnel, their transports, and supplies. Their protection from direct attack during inter-State wars necessarily derives from their civilian status and impartial humanitarian activities or from the Convention on the Safety of United Nations and Associated Personnel. By providing that relief "personnel shall be respected and protected", article 71 (2) of Protocol I explicitly protects such personnel, but not their transports and relief supplies.

404. The Fourth Geneva Convention does contain detailed provisions for the protection of civilian hospitals and their staff, 526/ which include articles 18 and 19 concerning wounded and sick persons. 527/ Additionally, under article 20 of the Fourth Convention, regular staff of civilian hospitals must be respected and protected (first and third paragraphs). They are required to carry an identity card and wear an armlet (second and third paragraphs). 528/ Article 15 of Protocol I broadens the duty to respect and protect all "civilian medical personnel". Paragraph 4 of this article declares that civilian medical personnel shall "have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary".

405. With regard to medical units, article 12 of Protocol I requires that these (military and duly established civilian medical units) be "respected and protected at all times", and that they "shall not be the object of attack". 529/ This article also prohibits the use of medical units to shield military objectives from attack, while extending them the benefits of the principle of proportionality regarding collateral damage. 530/ Article 13 sets forth the conditions resulting in termination of protection of civilian medical units.

406. The Fourth Convention contains various special rules for the protection of certain specified land, sea and air transports, which carry wounded and sick civilians, the infirm and maternity cases (arts. 21 and 22). Additional protection for medical transports is found in Part II, Section II of Protocol I, whose provisions apply equally to civilian and military transports. 531/ Under article 21 of the Protocol, medical vehicles, e.g. ambulances, must be respected and protected in the same manner as medical units under the four Geneva Conventions and Protocol I. The protection of medical ships is contained in articles 22 and 23 of Protocol I, while articles 26 to 31 establish a "balanced system of protection of medical aircraft". 532/ Most pertinent to safety in this regard is the requirement of article 24 that medical aircraft "be respected and protected, subject to the provisions of this Part". 533/

407. The security of civilian medical personnel (and civilian religious personnel) as well as medical units and medical transports is further enhanced by special rules of identification detailed in pertinent paragraphs of article 18 of Protocol I and the provisions of annex I to the Protocol (relating to identity cards, the distinctive emblem, distinctive signals and communications). 534/

408. Under article 85 of Protocol I, grave breaches under the Geneva Conventions are also considered grave breaches of the Protocol if the prohibited acts are committed against medical personnel, medical units and transports, or religious personnel which are under the control of the opposing party and which are protected by Protocol I.

(d) Conclusions

409. Where the Convention on the Safety of United Nations and Associated Personnel does not apply, humanitarian law offers adequate protection to relief workers, but not to their transports and relief supplies. This gap should be addressed by a future international instrument, which should also extend protections equivalent to those accorded medical units, personnel and transport under Protocol II to relief workers and their organizations engaged in humanitarian relief activities.

V. CONCLUSIONS

410. This report sets out to compile the law protecting the needs of internally displaced persons and to identify existing gaps in their legal protection. In his Comprehensive Study, 535/ the Representative on internally displaced persons queried whether existing international legal instruments provide sufficient legal protection for the internally displaced and whether what is needed is more legal prescription or simply better implementation of existing law. Based on the foregoing analysis, this study concludes that while existing law covers many aspects of particular relevance to internally displaced persons, there remain areas in which the law fails to provide sufficient protection for them.

411. Two principal categories of insufficient protection for internally displaced persons can be distinguished as follows: one area of insufficient coverage results from gaps in legal protection which occur where no explicit norms exist to address identifiable needs of the displaced. In some cases, there may be a norm in human rights law but not in humanitarian law and vice versa. 536/ In such cases, it is only possible to articulate rights by analogizing from existing provisions of law that apply only in limited situations or only to certain categories of persons such as children, refugees or minorities. The second area of insufficient coverage results where a general norm exists but a corollary, more specific right has not been articulated that would ensure implementation of the general norm in areas of particular need to internally displaced persons. 537/ In such cases, it is possible to infer specific legal rights from existing general norms; however, the protection of internally displaced persons would be strengthened by spelling out these specific guarantees in an international instrument.

412. As human rights law is usually binding on State actors only, internally displaced persons lack sufficient protection in situations of tensions and disturbances if violations are perpetrated by non-State actors; the same is true during non-international armed conflicts regarding acts by dissident forces not covered by Protocol II. Another case of insufficient protection occurs in situations that both fall below the threshold of application of humanitarian law and allow for restrictions or even derogations of human rights guarantees: in some situations of tensions and disturbances, or disasters resulting in the displacement of persons, restrictions may limit certain human rights that are critical for the well-being or even survival of the displaced. In the rare instance where a genuine emergency exists that does not reach the level of an armed conflict, internally displaced persons may be left without legal protection because a State may derogate from certain human rights obligations that are key to life-essential protection. In situations of non-international armed conflict, common article 3 or Protocol II sometimes does not afford protection and, at the same time, human rights guarantees are limited or derogated from. Again, internally displaced persons face a situation of insufficient protection reflecting the fact that the scope of non-derogable rights in human rights instruments is inadequate to address all the critical needs of the displaced. Finally, there is a vacuum in legal protection with regard to internally displaced persons in States that have not ratified key human rights treaties and/or the Geneva Conventions of 1949 and their Additional Protocols.

413. Where the analysis shows that the needs of internally displaced persons are insufficiently protected by existing international law, it is important to restate general principles of protection in more specific detail and to address clear protection gaps in a future international instrument on the protection of internally displaced persons. The precise form such an instrument could take should be decided in the light of the findings of the compilation and analysis and in the light of the need for reform. For the time being, it is sufficient to summarize the findings of this study as follows.

414. It can be concluded that in many aspects relating to the right to life, the prohibition of torture, the prohibition of hostage-taking, the prohibition of contemporary forms of slavery, subsistence rights and many aspects of religious rights, present international law seems to protect sufficiently most of the specific needs of internally displaced persons. If these rights are violated frequently, the reason does not lie in inadequate legal protection but rather in the unwillingness of States, and/or in non-international conflicts of dissident forces, to observe binding obligations.

415. Areas of insufficient protection where a general norm exists but a corollary, more specific right relevant for the protection of particular needs of internally displaced persons has not been articulated are numerous:

(a) Regarding discrimination, a statement would be useful that the notion of "other status" prohibiting discrimination includes the status of internally displaced persons;

(b) Regarding the protection of life, in inter-State armed conflicts, it should be clarified that, as provided by Protocol I and by non-derogable human rights law, internally displaced persons are always protected against acts of violence committed by their own Government. Furthermore, it should be highlighted that attacks on camps or settlements of internally displaced persons or the creation of free-fire zones in such areas are strictly prohibited;

(c) Regarding gender-specific violence, the law, in principle, provides for adequate protection. However, specific measures should be taken to ensure the protection of the specific needs of internally displaced women;

(d) Regarding detention, there is a need to clarify and to restrict the preconditions for lawful detention of internally displaced persons in closed camps;

(e) Regarding shielding, it would be appropriate to specify that internally displaced persons may never be used as human "shields" in armed conflicts of any kind by any of the parties to the conflict;

(f) Regarding forcible recruitment, existing guidelines on the forcible recruitment of refugee children could inspire principles concerning forcible recruitment of internally displaced children. As internally displaced adults are especially vulnerable to discriminatory conscription practices, their special needs should also be addressed by a future instrument;

(g) Regarding subsistence needs, many aspects of the rights to food, water, clothing and housing in situations of non-international armed conflict remain unclear;

(h) Regarding medical care, the special needs of internally displaced women in the areas of reproductive and psychological health care as well as of disabled persons in camps for the displaced should be addressed in a future international instrument;

(i) Regarding free movement, internally displaced persons need specific guarantees concerning the right to go to a safe place inside their country or seek asylum abroad in all situations or to return voluntarily and in safety to their place of residence. They also need a specific guarantee against forced return to places dangerous to their health and/or safety;

(j) Regarding family related needs, the question of family reunification in situations of non-international armed conflict needs to be clarified;

(k) Regarding the use of one's own language, the specific language-related needs of internally displaced persons who are in areas where another language is dominant should be addressed in a future international instrument;

(l) Regarding religion, it would be useful to address the specific religious needs of internally displaced persons in a future international instrument;

(m) Regarding work, the special needs of internally displaced women and of internally displaced persons in general to seek equal opportunity for employment and other economic activities should be addressed;

(n) Regarding education, the bearing of this guarantee on internally displaced persons in any situation of displacement needs to be clarified;

(o) Regarding associations, there is a need to clarify the extent to which the right to association of internally displaced persons is protected in situations of armed conflict;

(p) Regarding political participation, it is necessary to stress that internally displaced persons do not lose their right to political participation because they had to leave their homes, and the means for their participation, including access to voter registration procedures, must be safeguarded;

(q) Regarding the need for access to international assistance, whereas existing international law recognizes the right of internally displaced persons to request and receive protection and assistance from their Government and, to a certain extent, the right of international actors to offer humanitarian services on their behalf to affected Governments and authorities, a corresponding duty of States to accept offers of assistance by humanitarian organizations and to grant and facilitate free passage of relief has not been explicitly recognized.

416. Finally, there are some clear gaps in the legal protection of the needs of internally displaced persons:

(a) Regarding disappearances, it should be clarified that disappearances of internally displaced persons in any situation, including armed conflict, are prohibited and that this prohibition applies to all parties to the conflict;

(b) Regarding the missing and dead, an obligation to search for missing internally displaced persons, to gather information concerning their fate and to search and respectfully bury those who have been killed is lacking in present international law;

(c) Regarding the use of land-mines and like devices, there is a need to establish a clear prohibition of deploying and using such weapons against internally displaced persons by any party to an armed conflict of any kind;

(d) Regarding detention, safeguards against arbitrary detention of internally displaced persohs is lacking in situations of non-international armed conflict;

(e) Regarding needs for personal identification, documentation and registration, a future instrument should articulate specific duties of States or non-governmental actors to meet such needs in the context of displacement;

(f) Regarding property-related needs, the right to restitution of property lost as a consequence of displacement or to compensation for its loss is not fully recognized; there is a clear gap in situations of armed conflict, whether internal or international;

(g) Regarding relief workers and organizations, humanitarian law does not offer adequate protection to the transports and relief supplies of relief workers. This gap should be addressed by a future international instrument.

Notes*

* These notes are being published as received, without formal editing.

1/ Analytical Report of the Secretary-General on internally displaced persons, United Nations document E/CN.4/1992/23, 14 February 1992 (hereinafter Analytical Report).

2/ Comprehensive Study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the human rights issues related to internally displaced persons, pursuant to Commission on Human Rights resolution 1992/73, United Nations document E/CN.4/1993/35, annex, 21 January 1993 (hereinafter Comprehensive Study).

3/ Analytical Report, *supra* note 1, para. 17; Comprehensive Study, *supra* note 2, para. 34. During an international expert meeting on internally displaced persons, held in Vienna, 1-2 October 1994, it was recommended that the working definition be adapted as follows: "Persons or groups of persons who have been forced to flee their homes or places of habitual residence suddenly or unexpectedly as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized State border." For a discussion of definitional issues, *see also* Internally Displaced Persons, Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolutions 1993/95 and 1994/68, United Nations document E/CN.4/1995/50, 2 February 1995, paras. 116-127 (hereinafter 1995 Report).

4/ For a discussion of the role of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), the United Nations Development Programme (UNDP) and others, *see* 1995 Report, *supra* note 3, paras. 139-174.

In addition, international and regional efforts have begun to emphasize the need to address situations of internal displacement. *See e.g.*, Vienna Declaration and Programme of Action of the World Conference on Human Rights, held at Vienna, 14-25 June 1993, United Nations document A/CONF.157/23, Part I, para. 23 (calling on States to give special attention and find lasting solutions to the problems of internally displaced persons) (hereinafter Vienna Declaration); San Jose Declaration on Refugees and Displaced Persons *adopted* at San Jose, 7 December 1994 (hereinafter San Jose Declaration) *based in part on* Cartagena Declaration on Refugees, adopted at Cartagena de Indias, 22 November 1984, para. 9 (concern about the situation of displaced persons in their own countries); Towards a Genuine Partnership in a New Era: Summit Declaration of the Conference on Security and Cooperation in Europe (CSCE), *adopted* at Budapest, 1994, Part IX, para. 32; Document of the CSCE Human Dimension Seminar on Migration, including refugees and displaced persons, *adopted* at Warsaw, 20-23 April 1993; Conclusions of the Seminar on Protection of African Refugees and Internally Displaced Persons held in Harare, 16-18 February 1994 (hereinafter Harare Conclusions); Recommendations of the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa, EC/1994/SCP/CRP.7/Add.1, 21 September 1994 (hereinafter OAU/UNHCR Symposium). In addition, in Latin America, a Permanent Consultation on Internal Displacement in the Americas was formed in 1992 to address internal displacement on an ongoing basis.

5/ *Infra*, paras. 222-235. *See* also Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95, United Nations document E/CN.4/1994/44, 25 January 1994 (hereinafter 1994 Report), para. 24; and Maria Stavropoulou, *The Right Not to Be Displaced*, 9 THE AMERICAN UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 689 (1994).

6/ United Nations Charter, 26 June 1945, 59 Stat. 1031, T.S. 993, *entered into force* 24 October 1945.

7/ Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), United Nations document A/810 (1948) at 78 (advocating the promulgation and dissemination of the Universal Declaration by linking the document to a State's responsibility under art. 56 of the United Nations Charter).

8/ Customary international law results primarily from a general and consistent practice of States which States follow from a sense of legal obligation. In general, rules of customary international law are binding on all States. There is, however, a rarely invoked and sole exception to this rule: a State that persistently and openly objects to a practice before it crystallizes into law, will not be bound by it. In addition, there is the possibility of regional customary law, setting out more stringent standards.

9/ Universal Declaration of Human Rights, *adopted* 10 December 1948, General Assembly Resolution 217 A (III), United Nations document A/810 (1948) at 71 (hereinafter Universal Declaration).

10/ Although not a treaty, the Universal Declaration may be regarded as an authoritative statement of the content of the human rights provisions (arts. 55 and 56) of the United Nations Charter, a binding treaty commitment. There is an emerging consensus among international law scholars that at least some of the principal rights proclaimed in the Declaration represent norms that have acquired the status of customary international law. *See, e.g.*, Thomas Buergenthal, *International Human Rights Law and Institutions: Accomplishments and Prospects*, 63 WASH. L. REV. 1, 9 (1988). *See also* Blaine Sloan, *General Assembly Resolutions Revisited (Forty Years Later)*, THE BRITISH YEAR BOOK OF INTERNATIONAL LAW 1987, 39, 88 & n.255 (1988) (stating that "the predominant claim is that [the Universal Declaration of Human Rights] has become customary international law since its adoption by acceptance in practice" and providing sources in favour of and against this proposition, as well as sources with a more cautious approach); THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW 82-4 & n.9 (1989). For a more cautious approach, *see* Jan Martenson, *The Preamble*, in: ASBJORN EIDE ET AL., THE UNIVERSAL DECLARATION OF HUMAN RIGHTS - A COMMENTARY 22 (1992).

11/ The Corfu Channel Case, merits, I.C.J. Reports 1949, p. 22.

12/ Case concerning the Barcelona Traction, Light and Power Company Limited, second phase, I.C.J. Reports 1979, paras. 33-34.

13/ General Comment 24/52 of 2 November 1994, United Nations document CCPR/C/21/Rev.1/Add.6, para. 8.

14/ International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI) *adopted* 16 December 1966, U.N. GAOR, twenty-first session, Supp. No. 16, at 52, United Nations document A/6316 (1967), *entered into force* 23 March 1976, ratified by 129 States on 1 January 1995 (hereinafter CCPR).

15/ Optional Protocol to the International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI) *adopted* 16 December 1966, U.N. GAOR, twenty-first session, Supp. No. 16, at 59, United Nations document A/6316 (1966), 999 U.N.T.S. 302, *entered into force* 23 March 1976 ratified by 79 States on 1 January 1995; Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, General Assembly Resolution 44/128 *adopted* on 15 December 1989, U.N. GAOR, forty-fourth session, Supp. No. 49, at 206, United Nations document 14668, 999 U.N.T.S. 302, *entered into force* 11 July 1991, ratified by 25 States on 1 January 1995.

16/ International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200 A (XXI), *adopted* 16 December 1966, U.N. GAOR, twenty-first session, Supp. No. 16, at 49, United Nations Document A/6316 (1967), 993 U.N.T.S. 3, *entered into force* 3 January 1976, ratified by 131 States on 1 January 1995 (hereinafter CESCR).

17/ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 39/46, U.N. GAOR, thirty-ninth session, Supp. No. 51, at 197, United Nations document A/39/51 (1985), *entered into force* 26 June 1987, ratified by 85 States on 1 January 1995 (hereinafter CAT).

18/ Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly Resolution 260 A (III), *adopted* 9 December 1948, 78 U.N.T.S. 277, *entered into force* 12 January 1951, ratified by 116 States on 1 January 1995 (hereinafter Genocide Convention).

19/ International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* at New York, 7 March 1966, 660 U.N.T.S. 195, *entered into force* 4 January 1969, ratified by 142 States on 1 January 1995 (hereinafter CERD).

20/ Convention on the Elimination of Discrimination Against Women, *adopted* by General Assembly Resolution 34/180, U.N. GAOR, thirty-fourth session, Supp. No. 46, at 193, United Nations Document A/34/46 (1980), *reprinted in* 19 I.L.M. 33 (1980), *entered into force* 3 September 1981, ratified by 138 States on 1 January 1995 (hereinafter CEDAW).

21/ Convention on the Rights of the Child, *adopted* by General Assembly Resolution 44/25, U.N. GAOR, forty-fourth session, Supp. No. 49, at 166, United Nations document A/44/49 (1990), *reprinted in* 28 I.L.M. 1448 (1989), *entered into force* 2 September 1990, ratified by 168 States on 1 January 1995 (hereinafter CRC).

22/ American Declaration on the Rights and Duties of Man, *adopted* by the Ninth International Conference of American States, Bogota, Colombia, 1948, *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/Ser.L.V/II.82, doc. 6 rev. 1, at 17 (1992) (hereinafter American Declaration). For the normative value of the American Declaration, *see* I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of 14 July 1989, Ser. A No. 10.

23/ American Convention on Human Rights, *signed* at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969, *entered into force* 18 July 1978, *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/Ser.L.V/II.82, doc. 6 rev. 1, at 25 (1992), ratified by 25 States on 1 January 1995 (hereinafter American Convention).

24/ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", *signed* at San Salvador, El Salvador on 17 November 1988 at the eighteenth regular session of the General Assembly, *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/Ser.L.V/II.82, doc. 6 rev. 1, at 67 (1992), *not yet in force* (hereinafter Protocol of San Salvador).

25/ African (Banjul) Charter on Human and Peoples' Rights, OAU document CAB/LEG/67/3 rev. 5, *reprinted in* 21 I.L.M. 58 (1982), *entered into force* 21 October 1986, ratified by 49 States on 1 January 1995 (hereinafter African Charter).

26/ European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, 213 U.N.T.S. 221 (1950), *entered into force* 3 September 1953, ratified by 30 States on 1 January 1995 (hereinafter European Convention).

27/ European Social Charter of 18 October 1961, 529 U.N.T.S. 89; entered into force 26 February 1965, ratified by 20 States on 1 January 1995.

28/ The declarations referenced in this report include, among others, the Universal Declaration on the Eradication of Hunger and Malnutrition, *endorsed* 17 December 1974, General Assembly resolution 3348 (XXIX), U.N. GAOR, twenty-ninth session, Supp. No. 31, at 75, United Nations document A/9631 (1975) (hereinafter Universal Declaration on the Eradication of Hunger and Malnutrition) and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, *proclaimed* 14 December 1974, General Assembly resolution 3318 (XXIX), U.N. GAOR, twenty-ninth session Supp. No. 31, at 146, United Nations document A/9631 (1975) (hereinafter Declaration on the Protection of Women and Children).

29/ The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 7 HUMAN RIGHTS QUARTERLY 237 (1985) (hereinafter *Siracusa Principles*); and *The Paris Minimum Standards of Human Rights Norms in a State of Emergency, reprinted in* Richard Lillich, *Current Developments: The Paris Minimum Standards of Human Rights Norms in a State of Emergency*, 79 AMERICAN JOURNAL OF INTERNATIONAL LAW 1072 (1985) (hereinafter *Paris Minimum Standards*); *Declaration of Minimum Humanitarian Standards*, adopted by an expert meeting convened by the Institute for Human Rights, Abo Akademi University, in Turku/Abo, Finland, 30 November-2 December 1990, *attached to* United Nations document E/CN.4/Sub.2/1991/55, 12 August 1991 and revised at a meeting in Oslo on 29-30 September 1994, published in 89 AMERICAN JOURNAL OF INTERNATIONAL LAW 219-23 (1995) (hereinafter *Turku/Abo Declaration*). Non-governmental organizations such as the International Law Association and the International Commission of Jurists, comprised of academic scholars, practitioners, and government lawyers and judges, are largely responsible for the creation of such non-binding sets of principles.

30/ The mandate was established by CHR Res. 1982/29, Commission on Human Rights, Report of the Thirty-Eighth Session, 1982 U.N. ESCOR, Supp. No. 2, at 147, 2-3, United Nations document E/1982/12-E/CN.4/1982/30, *adopted* 11 March 1982. Since 1984, the Special Rapporteur's mandate includes the authority to "respond effectively to information that comes before him". CHR Res. 1984/50, Commission on Human Rights, Report of the Fortieth Session, 1984 U.N. ESCOR, Supp. No. 4, at 85, 8-9, United Nations document E/1984/14-E/CN.4/1984/77, *adopted without a vote* 14 March 1984. Modifications of the mandate also incorporated the "urgent action" procedure of expressing concerns about imminent executions or death threats to Governments and urging immediate action by Governments to prevent abuse.

31/ The mandate was established in CHR Res. 1985/33, Commission on Human Rights, Report of the Forty-First Session, 1985 U.N. ESCOR, Supp. No. 2, at 71-72, United Nations document E/1985/22-E/CN.4/1985/66, *adopted* 13 March 1985. Modifications in the mandate also incorporated the "urgent action" procedure of expressing concerns about imminent tortures to Governments and urging immediate action by Governments to prevent abuse.

32/ Resolution 1994/45, Commission on Human Rights, Report of the Fiftieth Session, 1994 U.N. ESCOR, Supp. No. 4, at 140, 142, 143, United Nations document E/CN.4/24-E/CN.4/1994/132. The Special Rapporteur is authorized to seek and receive information on and to recommend measures to eliminate violence against women, its causes and its consequences; to work closely with other mechanisms of the Commission and its Sub-Commission and with treaty bodies to incorporate information on human rights violations affecting women; and to cooperate with the Commission on the Status of Women.

33/ CHR Res. 1993/20, Commission on Human Rights, Report of the Forty-Ninth Session, 1993 U.N. ESCOR, Supp. No. 3, at 102, 103 United Nations document E/1993/23-E/CN.4/1993/122, *adopted* 2 March 1993. The Special Rapporteur is authorized to report to the Commission and the General Assembly on incidents of racism, exchange views with relevant mechanisms and treaty bodies, including CERD, and make recommendations regarding human rights education for preventive purposes.

34/ CHR Res. 20 (XXXVI), Commission on Human Rights, Report of the Thirty-Sixth Session, 1980 U.N. ESCOR, Supp. No. 3, at 180, United Nations document E/1980/13-E/CN.4/1408, *adopted without a vote* 29 February 1980. Later modifications in the mandate also incorporated the "urgent action" procedure of expressing concerns about imminent disappearances to Governments and urging immediate action by Governments to prevent abuse. The Working Group's mandate was recently extended for three years by the Commission on Human Rights, Fifty-First Session, resolution 1995/38. The Group's mandate does not include disappearances which occur in international armed conflicts. However, a special process on missing persons in former Yugoslavia was instituted with Commission on Human Rights resolution 1994/72, para. 28.

35/ *See* CHR Res. 1988/42, Commission on Human Rights, Report of the Forty-Fourth Session, 1988 U.N. ESCOR, Supp. No. 2, at 102-3, United Nations document E/1988/12-E/CN.4/1988/88 (1988), *adopted without a vote* 8 March 1988. The group of five experts examines and reports annually to the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the prevention of traffic in persons and exploitation of prostitution of others. Particular concern has been placed on the protection of children and migrant women against exploitation by prostitution and other slavery-like practices, including a call to member States to establish national bodies to protect such particularly vulnerable groups. In 1990, based on the group's report, the Commission on Human Rights appointed a Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, including the adoption of children for commercial purposes.

36/ Established with CHR Res. 1982/19, Commission on Human Rights, Report of the Thirty-Eighth Session, 1982 U.N. ESCOR, Supp. No. 2, at 135, 1, United Nations document E/1982/12-E/CN.4/1982/30, *adopted* 10 March 1982. The Working Group is authorized to review developments concerning the human rights of indigenous populations and develop standards concerning indigenous rights. Concentrating principally on standard-setting, the group has produced a draft Universal Declaration on the Rights of Indigenous Peoples and assisted in proposing a permanent United Nations forum for indigenous peoples. The Commission on Human Rights, by virtue of resolution 1995/32, established a working group to review the draft declaration.

37/ Established in CHR Res. 1991/42, Commission on Human Rights, Report of the Forty-Seventh Session, 1991 ESCOR, Supp. No. 2, at 105, 106, United Nations document E/1991/22-E/CN.4/1991/91. The working group, according to this resolution, has to investigate "cases of detention [which are] imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned". The Group does not handle "situations of international armed conflict in so far as they are covered by the Geneva Conventions ... and their Additional Protocols [sic], particularly when the International Committee of the Red Cross (ICRC) has competence". Report of the Working Group on Arbitrary Detention, United Nations document E/CN.4/1992/20 (21 January 1992), para. 13 (16).

38/ Regulations Respecting the Laws and Customs of War on Land, Annex to the 1907 Convention (IV) Respecting the Laws and Customs of War on Land, signed at The Hague, 18 October 1907 (hereinafter Hague Regulations).

39/ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 U.N.T.S. 85; Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135; Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 (hereinafter Fourth Geneva Convention). These four Geneva Conventions entered into force 21 October 1950 and were ratified by 185 States on 1 January 1995 (hereinafter collectively 1949 Geneva Conventions).

40/ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *adopted* 8 June 1977, *entered into force* 7 December 1978, 1125 U.N.T.S. 3, ratified by 135 States on 1 January 1995 (hereinafter Protocol I).

41/ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), *adopted* 8 June 1977, *entered into force* 7 December 1978, 1125 U.N.T.S. 609, ratified by 125 States on 1 January 1995 (hereinafter Protocol II).

42/ In the Report of the Secretary-General pursuant to para. 2 of Security Council Resolution 808 (1993), United Nations document S/25704, 3 May 1993, the United Nations Secretary-General states in para. 35 that "[t]he part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the protection of war victims; the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907 ...".

See also the United States of America v. von Leeb et al. (The High Command Case), XI TRIALS OF WAR CRIMINALS BEFORE THE NÜRNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10, at 532 (1950), *quoting* from judgement of the IMT against Goehring, et al., at 253 regarding the Hague Convention (IV):

> "But it is argued that the Hague Convention does not apply in this case, ... Several of the belligerents in the recent war were not parties to this Convention. In the opinion of the Tribunal it is not necessary to decide this question. The rules of land warfare expressed in the Convention undoubtedly represented an advance over existing international law at the time of their adoption. ... but by 1939 these rules laid down in the Convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war ..."

43/ Nicaragua v. the United States of America, merits, I.C.J. Reports 1986, para. 218.

44/ *See* COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, 1340-41 (Yves Sandoz et al. eds., 1986) (hereinafter COMMENTARY).

45/ Report of the Secretary-General, *supra* note 42, para. 34. For the detailed list of the guarantees whose violations are punishable by the Tribunal, *see* Statute of the International Tribunal for War Crimes in former Yugoslavia (as adopted by the Security Council in resolution 841/1993, hereinafter War Crimes Tribunal): Arts. 2 (grave breaches of the Geneva Conventions), 3 (violations of the laws or customs of war), 4 (genocide) and 5 (crimes against humanity). These provisions include, *inter alia*, the following prohibitions: Genocide (art. 4 Statute); willful killing *hors de combat* and murder (art. 2, letter a and art. 5, letter a); attack or bombardment of undefended towns, villages, dwellings or buildings (art. 3, letter c); torture and inhuman treatment (art. 2, letters b and c, art. 5, letters f and i); rape (art. 5, letter g); the use of weapons calculated to cause unnecessary suffering (art. 3, letter a); unlawful confinement or deportation of civilians (art. 2, letter g); taking civilians as hostages (art. 2, letter h); willful deprivation of the right to a fair trial (art. 2, letter f); plunder of public and private property (art. 3, letter e) and wanton destruction of cities, towns and villages or devastations not justified by military necessity (art. 3, letter b).

46/ For a more detailed discussion *see infra*, chap. IV.

47/ Convention Relating to the Status of Refugees, Geneva, 28 July 1951, 189 U.N.T.S. 150, *entered into force* 22 April 1954, ratified by 124 States on 17 March 1995 (hereinafter Refugee Convention).

48/ Protocol Relating to the Status of Refugees, New York, 31 January 1967, 606 U.N.T.S. 267, *entered into force* 4 October 1967, ratified by 124 States on 17 March 1995 (hereinafter Refugee Protocol).

49/ Organization for African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, article I.2, 1001 U.N.T.S. 45, ratified by 42 States on 1 January 1995. *See also*, OFFICE OF THE HIGH COMMISSIONER FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS, para. 22 (1988).

50/ Conclusions of the Declaration of Cartagena of 1984, *printed in* ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 1984-1985, OEA/Ser.L/V/II.66, doc. 10 rev. 1, 1 October 1985, 177, 180, para. 3 (hereinafter Declaration of Cartagena).

51/ The Declaration of Cartagena does not mention occupation.

52/ For details, *see infra*, para. 75 with notes 110 and 111.

53/ *See* arts. 13 (movable and immovable property), 15 (right of association), 17 (wage-earning employment), 18 (self-employment), 19 (liberal professions), 21 (housing), 26 (freedom of movement) of the Refugee Convention.

54/ *See, e.g.*, Security Council resolution 688 (1991) of 5 April 1991, *adopted* by 10 votes to 3 with 2 abstentions, United Nations document S/RES/688 (1991) (hereinafter S.C. resolution 688) (calling upon Secretary-General to pursue humanitarian efforts in Iraq using "all the resources at his disposal," following which UNHCR was commissioned to provide assistance to approximately 500,000 returnees and 500,000 internally displaced).

55/ UNHCR may engage, at the request of the General Assembly, in special operations for internally displaced persons, not related to returnee programmess, in connection with article 9 of the Statute of the Office of the United Nations High Commissioner for Refugees, *reprinted in* COLLECTION OF INTERNATIONAL INSTRUMENTS CONCERNING REFUGEES, HCR/IP/1 (1988) at 3. It may also undertake such general humanitarian endeavours at the request of the Secretary-General under General Assembly resolution 2956 (XXVII) of 12 December 1972, United Nations document A/RES/2956 (XXVII), 18 December 1972. Examples of such UNHCR programmess involving humanitarian and other assistance to internally displaced persons are found in Sri Lanka following the resumption of conflict in June 1990 and pursuant to a letter-request by the Secretary-General to the High Commissioner for Refugees dated 5 September 1991 and in the current conflict in the former Yugoslavia following a letter-request by the Secretary-General to the High Commissioner for Refugees dated 14 November 1991.

56/ Primary examples of UNHCR's involvement in regional arrangements for refugees and internally displaced persons are SARRED (International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa, 1988) and CIREFCA (International Conference on Central American Refugees, 1989).

57/ The High Commissioner specified primary and supplemental responsibility, respectively, in the following situations:

> "(a) Situations of internal displacement where there is a direct link with UNHCR's activities under its basic mandate to protect refugees and seek solutions to refugee problems, including: (i) those where internally displaced populations are mingled with groups of returnees or are in areas to which refugees are expected to return; or (ii) those where the same causes have produced both displacement and refugee flows or there is a significant risk of cross-border movement of some or all of the internally displaced. In these situations, UNHCR will favourably consider assuming primary responsibility for the internally displaced, assessing in each case the benefits of its involvement in terms of protection and solutions as well as the need for assistance and protection.
>
> (b) Other situations where the link with mandated UNHCR activities is not present or is less direct. In these situations, UNHCR may nevertheless consider involvement to relieve the causes of internal displacement and to contribute to conflict resolution through humanitarian action, but UNHCR activities would normally be supplementary to the humanitarian efforts of other international organizations." Executive Committee of the High Commissioner's Programme, Note on International Protection (submitted by the High Commissioner), United Nations document A/AC.96/815, 31 August 1993, at paragraph 46.

These criteria were noted by the Executive Committee of the High Commissioner's Programme in its Report of the Forty-Fourth Session (Geneva, 4-8 October 1993), *General Conclusion on International Protection*, United Nations document A/AC.96/821, 12 October 1993, at paragraph 19 (s). In its 1994 Conclusion on Internally Displaced Persons, the Executive Committee of UNHCR encouraged the High Commissioner to proceed with the implementation of UNHCR's internal criteria and guidelines for involvement in situations of internal displacement: Executive Committee Conclusion No. 75 (XLV) Internally Displaced Persons (1994) (hereinafter EXCOM Conc. 75), *printed in* Report of the Forty-Fifth Session of the Executive Committee of the High Commissioner's Programme (Geneva, 3-7 October 1994), United Nations document A/AC.96/839, 11 October 1994 (hereinafter EXCOM 1994 Report) paragraph 20 (k) at 14.

58/ In 1994, the General Assembly called "for a more concerted response by the international community to the needs of internally displaced persons" and, in accordance with General Assembly resolution 48/116 of 1993, reaffirmed "its support for the High Commissioner's efforts, on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations and with the consent of the State concerned, and taking into account the complementarities of the mandates and expertise of other relevant organizations, to provide humanitarian assistance and protection to such persons, emphasizing that activities on behalf of internally displaced persons must not undermine the institution of asylum, including the right to seek and enjoy in other countries asylum from persecution". General Assembly resolution 49/169, *adopted without a vote* 23 December 1994, paragraph 10. The General Assembly furthermore acknowledged the continuing close cooperation between the High Commissioner for Refugees and the Secretary-General's Representative on Internally Displaced Persons and recognized the importance of such cooperation. *Id.* paragraph 13.

59/ *See ICRC. Protection and Assistance Activities in Situations Not Covered by International Humanitarian Law*, 262 INTERNATIONAL REVIEW OF THE RED CROSS 9, 13 (1988) (detailing examples of tensions and disturbances).

60/ *See* Hans-Peter Gasser, *A Measure of Humanity in Internal Disturbances and Tensions: Proposal for a Code of Conduct*, 262 INTERNATIONAL REVIEW OF THE RED CROSS 38, 42 (1988) (providing an overview of existing human rights legislation and offering a new approach to better protect human values in instances of internal disturbances and tensions); Theodor Meron, *Draft Model Declaration in Internal Strife*, 262 INTERNATIONAL REVIEW OF THE RED CROSS 59 (1988) (focusing on the general characteristics of internal strife and providing a model declaration) (hereinafter *Draft Model Declaration*).

61/ *See, e.g.*, articles 12, 13, 18, 21 and 22, CCPR; articles 10, 14 and 15, CRC; article 11, African Charter; articles 12, 13, 15, 16 and 22, American Convention; articles 8-11, European Convention. For purposes of this report, the terms "restriction" and "restrict" are used interchangeably with the terms "limitation" and "limit", respectively.

62/ Siracusa Principles, *supra* note 29, paragraph 10.

63/ General Comment of the Committee on Economic, Social and Cultural Rights, No. 3, paragraph 10 (Fifth session, 1990); General Comments of the Committee on Economic, Social and Cultural Rights, Nos. 1-4, *reprinted in* Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, United Nations document No. HRI/GEN/1/Rev. 1 (29 July 1994) (hereinafter CESCR General Comments).

64/ For purposes of this report, the terms "suspension" and "suspend" are used interchangeably with the terms "derogation" and "derogate", respectively.

65/ Similar provisions are contained in article 27, American Convention and article 15, European Convention on Human Rights. *See also, Siracusa Principles, supra* note 29.

66/ *See* articles 4 (2), CCPR (which includes the freedom of thought, conscience and religion into the list of non-derogable rights); 27 (2), American Convention (adding the right to juridical personality, the freedom of conscience and religion, the right of family, the right to a name, the right of the child, the right to nationality and the right to participate in government); and 15 (2), European Convention.

67/ *See, e.g.*, MANFRED NOWAK, UNITED NATIONS COVENANT ON CIVIL AND POLITICAL RIGHTS - CCPR COMMENTARY, pp. 75 and 86 (1993); (hereinafter Nowak, Commentary).

68/ It is arguable that the customary law doctrines of necessity and force majeure could, however, be invoked in very exceptional cases to justify temporary non-application of these conventions.

69/ Article 5 (2), CESCR, article 41, CRC, and article 4, Protocol of San Salvador.

70/ Philip Alston and Gerard Quinn, *The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights*, 9 HUMAN RIGHTS QUARTERLY 156, 219 (1987) (hereinafter *Alston & Quinn*).

71/ CESCR General Comments, *supra* note 63, No. 3, para. 10.

72/ On the interaction between human rights law and humanitarian law, *see* Report on the situation of human rights in Kuwait under Iraqi occupation, prepared by Mr. Walter Kälin, Special Rapporteur to the Commission on Human Rights, in accordance with Commission resolution 1991/67, United Nations document E/CN.4/1992/26.

73/ *See, e.g.*, articles IV-VII, Genocide Convention, articles 4-9, CAT, and the Statute of the International Tribunal for Rwanda, *infra* note 75; *see also*, International Law Commission (ILC), Draft Code of Crimes Against the Peace and Security of Mankind, Part II, in: Report of the International Law Commission on the work of its forty-third session, 29 April-19 July 1991, United Nations document A/46/10, pp. 243-250.

74/ *See* COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949: GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR (published under the general editorship of Jean S. Pictet, 1958) 35-36 (hereinafter COMMENTARY ON THE FOURTH GENEVA CONVENTION).

75/ The Statute of the International Tribunal for Rwanda granted the tribunal jurisdiction to prosecute individuals for violations of basic rules governing the conduct of internal hostilities. Specifically, under article 4 of the Statute, the Tribunal is empowered to prosecute "persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977". Under article 6 of the Statute, each person "who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime". Statute of the International Tribunal for Rwanda, annexed to Security Council resolution 955, *adopted* 8 November 1994, United Nations document S/RES/955 (1994) (hereinafter INTERNATIONAL TRIBUNAL FOR RWANDA).

76/ *See, e.g.*, Report on the situation of human rights in Kuwait under Iraqi occupation, *supra* note 72.

77/ This report uses the term "protected persons" within the meaning of this article 4.

78/ Commentary, *supra* note 44, paragraph 1909.

79/ This report will give special attention to women and children throughout the text, thus taking into account Commission on Human Rights resolution 1995/57 encouraging the Representative "to continue to pay specific attention in his review to the protection and assistance needs of women and children".

80/ General Comments adopted by the Human Rights Committee, No. 23, paragraph 4. General Comments adopted by the Human Rights Committee, Nos. 1-23, *reprinted in* Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, United Nations document No. HRI/GEN/1/Rev.1 (29 July 1994) (hereinafter HRC General Comments). Accord, *id.* No. 18, paragraph 12.

81/ *See, e.g.*, HRC General Comments, *supra* note 80, No. 18, paragraph 7, applying this type of definition to the CCPR by reference to, *inter alia*, the definitions found in the CERD (art. 1) and the CEDAW (art. 1).

82/ Generally, discriminatory conduct can be found where intent or "unjustifiable disparate impact upon a group ..." exists. *See, e.g.*, General Recommendations adopted by the Committee on the Elimination of Racial Discrimination, No. XIV, paragraph 2. General Recommendations adopted by the Committee on the Elimination of Racial Discrimination, *reprinted in* Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, United Nations document No. HRI/GEN/1/Rev.1 (29 July 1994) (hereinafter CERD General Recommendations).

83/ Both International Covenants contain these specified grounds. The United Nations Charter specifies that human rights and fundamental freedoms are to be respected without discrimination based on race, sex, language and religion. *See* United Nations Charter, Article 1 (3), 13 (1) (b), 55 (c) and 76 (c).

84/ *See also*, the non-discrimination clauses in regional instruments: article 14, European Convention; article II, American Declaration; articles 1 and 24, American Convention; article 3, Additional Protocol to the American Convention; articles 2, 3 and 18, paragraph 3, African Charter.

85/ *See, e.g.* MARC BOSSUYT, GUIDE TO THE "TRAVAUX PREPARATOIRES" OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1987) at 486.

86/ *See* the views of the Human Rights Committee on communication No. 196/1985 (*Gueye et al. v. France*), paragraphs 9.4, 9.5 and 10. For a discussion of disability-based discrimination, *see infra*, paragraph 57; *see also infra*, paragraphs 213-220.

87/ United Nations Declaration on the Elimination of All Forms of Racial Discrimination, proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963.

88/ UNESCO Convention against Discrimination in Education, adopted on 14 December 1960 by the General Conference of the UNESCO, 429 U.N.T.S. 93, entered into force 22 May 1962, ratified by 84 States on 1 January 1995.

89/ Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, proclaimed by General Assembly resolution 36/55 of 25 November 1981.

90/ Declaration on Race and Racial Prejudice, adopted and proclaimed by the General Conference of the UNESCO on 27 November 1978.

91/ Declaration on the Elimination of Discrimination against Women, proclaimed by General Assembly resolution 2263 (XXII) of 7 November 1967.

92/ *See* Principle 18 of the United Nations Principles for Older Persons (United Nations Principles for Older Persons), *adopted by and annexed* to General Assembly resolution 46/91 of 16 December 1991, stating that "[o]lder persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution". Principle 17 provides that "[o]lder persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse".

93/ The term "gender equality" in this report encompasses the principle of non-discrimination in its commonly recognized mandate of equal treatment as well as positive obligations to remedy inequality. Under the CEDAW, States parties agree to ensure freedom from discrimination on the basis of sex which has either the effect or the purpose of breaching recognized rights. The inclusion of equality of result as well as equality of means within the content of the principle of gender equality is emerging in scholarly debate as a viable interpretation of the relevant provisions of the CCPR and European Convention as well. *See, e.g.*, Titia Loenen, *Rethinking Sex Equality as a Human Right*, 3 NETHERLANDS QUARTERLY OF HUMAN RIGHTS, 253 (1994).

94/ HRC General Comments, *supra* note 80, No. 17, paragraphs 1 and 3.

95/ World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s, adopted at New York, 30 September 1990, in Note by the Secretary-General on the Status of the Convention on the Rights of the Child, annex, United Nations document E/CN.4/1991/59, 12 December 1990 (hereinafter World Declaration and Plan of Action on Children), paras. 11 and 20 (7).

96/ CESCR General Comment No. 5, (E/1995/22-E/C.12/1994/20, p. 99) paragraph 2 (hereinafter CESR General Comment No. 5).

97/ *Id.*, para. 15.

98/ *Id.*, paragraphs 19 and 31.

99/ *Id.*, para. 32.

100/ For the notion of "protected person" *see supra*, para. 44.

101/ *See, e.g.*, articles 6 (2) of the CCPR; 2 (2) of the European Convention; 4 (2) American Convention.

102/ Views of the Human Rights Committee on Communication No. 45/1979 (Suarez de Guerrero v. Colombia), paras. 13.2 and 13.3.

103/ HRC General Comments, *supra* note 80, No. 6, para. 3.

104/ HRC General Comments, *supra* note 80, No. 6, para. 2.

105/ *Id.*, para. 5.

106/ General Recommendations adopted by the Committee for the Elimination of All Forms of Discrimination Against Women, No. 19, para. 7 (a), *reprinted in* Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, United Nations document No. HRI/GEN/1/Rev.1 (29 July 1994) (hereinafter CEDAW General Recommendations). For a discussion of violence against women, *see infra* paras. 124-142.

107/ Concerning the non-derogable character of article 6 (1) ICCPR, *see* HRC General Comments, *supra* note 80, No. 6, para. 1. *See also*, OAU/UNHCR Symposium, *supra* note 4, Recommendation 13 according to which the right to life of internally displaced persons "must be respected at all times".

108/ In this regard, article 6 (3) of the ICCPR states that "[w]hen deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide".

109/ *Supra*, note 4, Part I, para. 28. Emphasis added.

110/ *E.g.*, the following Conclusions of the Executive Committee of the United Nations High Commissioner for Refugees: EXECUTIVE COMMITTEE CONCLUSIONS: NO. 72 (XLIV) PERSONAL SECURITY OF REFUGEES (1993) (hereinafter EXCOM CONC. NO. 72); NO. 64 (XLI) REFUGEE WOMEN AND INTERNATIONAL PROTECTION (1990) (hereinafter EXCOM CONC. NO. 64); NO. 60 (XL) REFUGEE WOMEN (1989) (hereinafter EXCOM CONC. NO. 60); NO. 59 (XL) REFUGEE CHILDREN (1989) (hereinafter EXCOM CONC. NO 59); NO. 54 (XXXIX) REFUGEE WOMEN (1988) (hereinafter EXCOM CONC. NO. 54); NO. 47 (XXXVIII) REFUGEE CHILDREN (1987) (hereinafter EXCOM CONC. NO. 47) para. e; NO. 39 (XXXVI) REFUGEE WOMEN AND INTERNATIONAL PROTECTION (1985) (hereinafter EXCOM CONC. NO. 39).

111/ *E.g.*, UNHCR Policy on Refugee Women submitted by the High Commissioner for Refugees, United Nations document A/AC.96/754 (1990) (hereinafter Policy on Refugee Women); OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, UNHCR GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN (1991) (hereinafter GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN); Progress Report on Implementation of the UNHCR Guidelines on the Protection of Refugee Women, United Nations document EC/SCP/74, 22 July 1992, paras. 12-17 (hereinafter 1992 Progress Report); Progress Report on Implementation of the UNHCR Guidelines on the Protection of refugee Women, United Nations document EC/1993/SC.2/CRP.37, 10 December 1993 (hereinafter 1993 Progress Report); UNHCR Policy on Refugee Children, United Nations document EC/SCP/82, 6 August 1993 (hereinafter Policy on Refugee Children); REFUGEE CHILDREN: GUIDELINES ON PROTECTION AND CARE, at 79-84 (UNHCR, 1994) (hereinafter GUIDELINES ON REFUGEE CHILDREN).

112/ Common article 3's prohibition of "violence to life and person" of "persons taking no active part in the hostilities" may be broad enough to encompass attacks against civilians in territory controlled by an adverse party.

113/ General Assembly resolution 2444, United Nations GAOR, twenty-third session, Supp. No. 18, at 50, United Nations document A/7218 (1969), *adopted by unanimous vote* 19 December, 1968 (hereinafter resolution 2444).

114/ The principle of distinction was reiterated by Basic Principles for the Protection of Civilian Populations in Armed Conflict, *adopted* 9 December 1970, General Assembly resolution 2675, United Nations GAOR, twenty-fifth session, Supp. No. 28, at 76, United Nations document A/8028 (1971) (hereinafter General Assembly resolution 2675).

115/ Both principles are affirmed in General Rules A (1) and A (2) of the DECLARATION ON THE RULES OF INTERNATIONAL HUMANITARIAN LAW GOVERNING THE CONDUCT OF HOSTILITIES IN NON-INTERNATIONAL ARMED CONFLICTS which identifies principles and norms that are crystallized or emergent rules of international law in situations of non-international armed conflict. DECLARATION ON THE RULES OF INTERNATIONAL HUMANITARIAN LAW GOVERNING THE CONDUCT OF HOSTILITIES IN NON-INTERNATIONAL ARMED CONFLICTS, adopted by the Council of the International Institute of Humanitarian Law, Taormina (Italy), 7 April 1990 (approving the conclusions and commentary of the Fourteenth Round Table of the International Institute of Humanitarian Law, San Remo (Italy), 13-14 September 1989), *reprinted in* 278 INTERNATIONAL REVIEW OF THE RED CROSS 404 (1990) (hereinafter DECLARATION BY THE INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW).

See also, the Declaration on the Protection of Women and Children, *supra* note 28, para. 1:

> "Attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned."

The prohibition of "shielding", whereby, for instance, military forces "hide" behind settlements of displaced persons is discussed *infra*, at paras. 157-164.

116/ Displaced persons providing indirect support to dissident forces are clearly subject to prosecution by the Government for giving aid and comfort to the enemy. The prosecution of displaced persons under such circumstances must conform to the obligatory fair trial guarantees set forth in common article 3 and, where applicable, article 6 of Protocol II.

117/ In humanitarian law, prohibited acts of terrorism encompass, *inter alia*, "Acts or threats of violence the primary purpose of which is to spread terror among the civilian population" (article 51 (2) of Protocol I).

118/ BOTHE, PARTSCH AND SOLF, NEW RULES FOR VICTIMS OF ARMED CONFLICTS: COMMENTARY ON THE TWO 1977 PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 at 677 (1982) (hereinafter NEW RULES).

119/ *See infra*, para. 86. The DECLARATION BY THE INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW, *supra* note 115, explicitly prohibits, during non-international armed conflict, indiscriminate attacks and "[a]cts of violence intended primarily to spread terror among the civilian population" (General Rules, A (1) and A (2)).

120/ NEW RULES, *supra* note 118, at 692, referring to CDDH/III/SR. 24, para. 45.

121/ *See*, for example, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 21 (XXXII) GENERAL (1981), para. (h); CONCLUSION NO. 29 (XXXIV) GENERAL (1983), para. (d).

122/ *See* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 48 (XXXVIII) MILITARY OR ARMED ATTACKS ON REFUGEE CAMPS AND SETTLEMENTS (1987).

123/ For the notion of protected persons, *see supra* para. 44.

124/ *See supra* para. 44.

125/ Article 75 of Protocol I applies to persons "[i]n so far as they are affected by a situation referred to in Article 1 of this Protocol, ... who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol ..." (hereinafter non-protected persons).

126/ Concerning questions related to forcible recruitment, *see infra*, paras. 165-171.

127/ Declaration on the Protection of All Persons from Enforced Disappearance, *adopted without a vote* 18 December 1992, General Assembly resolution 133, United Nations GAOR, forty-seventh session, Supp. No. 49, at 207, United Nations document A/47/49 (Vol. I) (1993).

128/ Inter-American Convention on Forced Disappearance of Persons (resolution adopted at the seventh plenary session, held on 9 June 1994), AG/RES. 1256 (XXIV-O/94). Article II of this Convention describes forced disappearance for the purposes of the Convention as

> "the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees".

Article XV of this Convention stipulates that it does not apply to international armed conflicts "governed by the 1949 Geneva Convention and its Protocol concerning protection of wounded, sick, and shipwrecked members of the armed forces; and prisoners of war and civilians in time of war".

129/ *Id.*, article VIII.

130/ Resolution by the General Assembly of the Organization of American States, AG/RES. 666 (XIII-0/83), 18 November 1983.

131/ Decision of I/A Court H.R., Velásquez Rodríguez Case, Judgment of 29 July 1988, Ser. C No. 4.

132/ HRC General Comments, *supra* note 80, No. 6, para. 4.

133/ HRC, Views on Communication 449/1991 (Mojica v. Dominican Republic) United Nations document CCPR/C/51/D/449/1991 (10 August 1994), paras. 5.5 and 6.

134/ *Id.*, para. 5.4 quoting the Committee's Views on communications, Nos. 195/1985 (Delgado Paéz v. Colombia), adopted on 12 July 1990, paras. 5.5 and 5.6 (Annual Report 1990, 43); 314/1988 (Bwalya v. Zambia), adopted on 14 July 1993, para. 6.4; 468/1991 (Ol Bahamonde v. Equatorial Guinea), adopted on 20 October 1993, para. 9.2.

135/ *Id.*, para. 5.7.

136/ Article 85 of Protocol I.

137/ In contrast, ICRC is mandated to deal with such cases within the context of the search for missing persons. *See* article 33 (3) of Protocol I.

138/ Regarding enforced disappearances, *see supra* paras. 89-101.

139/ *See* however, *supra* para. 96 concerning the obligation to search for persons who have disappeared.

140/ According to the NEW RULES, *supra* note 118, at 171, this article merely presupposes a right of families, but does not specify whether it is a legal or moral right.

141/ NEW RULES, *supra* note 118, at 169.

142/ United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons: Final Act, *opened for signature* 10 April 1981, United Nations document A/CONF.95/15 (1980), *reprinted in* 19 I.L.M. 1523 (1980) (hereinafter Weapons Convention). The Convention and its three Protocols entered into force on 2 December 1983 and have been ratified by 54 States on 22 October 1995. The Convention is an "umbrella" treaty to which are attached three optional protocol agreements, each containing specific limitations on the use of particular conventional weapons. In addition to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) (hereinafter Land-Mines Protocol), the Convention incorporates the Protocol on Non-Detectable Fragments (Protocol I) and the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III). Under this structure, the provisions of the Convention apply to all three protocols.

143/ The third paragraph of the Weapons Convention's preamble declares that a basic purpose of the Convention and its Land-Mines Protocol is to give effect to two fundamental customary principles of the laws of war, namely, that the rights of the parties to an armed conflict to adopt methods or means of warfare are not unlimited and the use of weapons, projectiles, or material calculated to cause superfluous injury or unnecessary suffering is prohibited. Another customary principle of the laws of war - the protection of the civilian population against the effects of hostilities - is recited in the Convention's second preambular paragraph. As previously indicated, these principles of customary international law are expressly recognized in resolution 2444. *See* resolution 2444, *supra* note 113.

144/ The de Martens Clause in this Convention reads as follows:

> "that in cases not covered by this Convention and its annexed Protocols or by other international agreements, the civilian population and the combatants shall at all times remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

This clause is named after Fyodor de Martens, the Russian jurist and diplomat who drafted the preambles to the Hague Conventions No. II of 1899 and No. IV of 1907 which codified much of the law of war. The de Martens' formulation was intended to obviate the notion that any means or methods of warfare not expressly prohibited by treaty was permissible. The clause thus affirms that customary laws of war remain in full force, except to the extent modified by treaty. Formulations similar to the original de Martens Clause appear in the four 1949 Geneva Conventions and in Protocols I and II.

145/ The War Victims Report states in this respect that "the International Conference for the Protection of War Victims should ... express its desire for future examination of the possibility of formally extending to non-international armed conflicts the applicability of international humanitarian law treaties, such as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, which at present apply only to international conflicts". REPORT ON THE PROTECTION OF WAR VICTIMS, prepared by the International Committee of the Red Cross, *reprinted in* 296 INTERNATIONAL REVIEW OF THE RED CROSS 391, 415 (1993).

146/ A review process under the auspices of the United Nations is currently under way to ban the use of land-mines.

147/ Rape can occur as a form of torture and cruel, inhuman or degrading treatment or punishment, and as a form of gender-specific violence. This report elaborates on this issue in para. 127.

148/ *See* article 4(2) of the CCPR, article 27(2) of the American Convention, and article 15(2) of the European Convention. In the *Siracusa Principles*, *supra* note 29, the freedom from torture and cruel, inhuman or degrading treatment or punishment and the freedom from medical and scientific experimentation without free consent are declared non-derogable (para. 58), and their denial is prohibited by customary international law in all circumstances (para. 69). Accord, *Paris Minimum Standards*, *supra* note 29.

149/ Article 7 of the CCPR adds to this right that "[i]n particular, no one shall be subjected without his free consent to medical or scientific experimentation".

150/ Article 3 of the European Convention only mentions inhuman or degrading treatment or punishment, thus omitting "cruel". In an effort to focus on preventing rather than merely redressing acts of torture, the European Convention for the Prevention of Torture and Inhuman or Degrading

Treatment or Punishment (Strasbourg, 26 November 1987, *entered into force* 1 February 1989, ratified by 29 States on 1 January 1995) established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which shall "by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment". (art. 1).

151/ E.g., articles 5, 7 and 8 of the CAT.

152/ Inter-American Convention to Prevent and Punish Torture, signed at Cartagena de Indias, Colombia, on 9 December 1985, at the fifteenth regular session of the General Assembly, *entered into force* 28 February 1987 and ratified by 13 States on 1 January 1995.

153/ HRC General Comments, *supra* note 80, No. 20, paras. 2, 3.

154/ *Id.*, para. 3.

155/ Article 1(1) of the CAT describes torture, for the purposes of that Convention, as

> "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

For the purposes of Inter-American Convention to Prevent and Punish Torture, its article 2 defines torture as:

> "any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article."

156/ Nowak, Commentary, *supra* note 67, 129-130.

157/ See, e.g., Ireland v. United Kingdom, Judgement of the European Court on Human Rights, Series A, No. 25, para. 162.

158/ Nowak, Commentary, *supra* note 67.

159/ HRC General Comments, *supra* note 80, No. 20, para. 2. Similarly, General Comments, *supra* note 80, No. 7, para. 2: "[I]t is also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority."

160/ The right to be treated with humanity and respect for one's inherent dignity during detention is closely related, and in some cases, implicated in the right to be free from torture and cruel, inhuman or degrading treatment or punishment, discussed earlier. The borderlines distinguishing violations of article 10(1) and violations of article 7 of the CCPR have yet to be clearly demarcated. *See, e.g.*, DOMINIC MCGOLDRICK, THE HUMAN RIGHTS COMMITTEE: ITS ROLE IN THE DEVELOPMENT OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1994), sects. 9.11 - 9.25, at 367-80.

161/ HRC General Comments, *supra* note 80, No. 21, para. 2 (emphasis added).

162/ *Id.*, para. 3.

163/ *Id.*, para. 4.

164/ For the detention of internally displaced persons in camps, *see infra*, paras. 150-53.

165/ HRC General Comments, *supra* note 80, No. 17, paragraph 3.

166/ The Declaration on the Protection of Women and Children, *supra* note 28, provides in paragraph 4 that "[a]ll the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children".

167/ This is the case if they are "committed against persons in the power of an adverse Party protected by articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol".

168/ This report uses the term "gender-specific violence" to refer to violence against individuals of either sex; the term "gender-based violence" applies to women and girls in particular.

169/ The working definition of "gender-specific violence" used in this report mirrors the definition of the term "violence against women" found in the United Nations Declaration on the Elimination of Violence Against Women, General Assembly resolution 104, *adopted without a vote* 20 December 1993, United Nations GAOR, forty-eighth session, Supplement No. 49, at 217, United Nations document A/48/49 (Vol. I) (1994) (hereinafter United Nations Declaration on Violence Against Women).

170/ Violence against displaced women mirrors the pattern of gender-specific violence in general. The United Nations Declaration on Violence Against Women recognizes that "violence against women is a manifestation of historically unequal power relations between men and women which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men". *Id.*, preambular para. 6.

171/ CEDAW General Recommendations, *supra* note 106, No. 19, para. 7. In particular, the CEDAW-Committee referenced the right to equal protection according to humanitarian norms in time of international or internal armed conflict. *Id.*, para. 7(c).

172/ *See supra*, paras. 48-55.

173/ CEDAW General Recommendations, *supra* note 106, No. 19, para. 1. The CEDAW-Committee maintains that gender-based violence is inconsistent with the basic duty under the Convention to eliminate gender discrimination (arts. 2 and 3) and with specific obligations under articles 5, 10, 11, 12, 14, and 16. *Id.*, paras. 7-23.

174/ CEDAW General Recommendations, *supra* note 106, No. 19, para. 6.

175/ *See, e.g.*, the 1986 Report of the Special Rapporteur on Torture, E/CN.4/1986/15, para. 119 and his 1995 Report, E/CN.4/1995/34, paras. 16-19; Reports of the Special Rapporteur on the Situation on Human Rights in Myanmar, United Nations document E/CN.4/1993/37 at paragraphs 136, 138 (noting "a systematic practice of torture (including rape)") and United Nations document E/CN.4/1995/65, para. 114 ("Other reported methods of torture include sexual assault and rape ..."); Report of the Special Rapporteur on the Situation of Human Rights in Occupied Kuwait, *supra* note 72 at paras. 111 (describing rape of female detainees as sexual torture) and 184 (characterizing "[r]apes committed by members of the Iraqi occupying forces during the exercise of their official functions, especially in the context of house searches or interrogations in detention" as torture and cruel, inhuman or degrading treatment); Report of the Secretary-General, Rape and abuse of women in the territory of the Former Yugoslavia, United Nations document E/CN.4/1994/5; *see*, also, several reports by the Special Rapporteur on Former Yugoslavia, especially Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992, United Nations document E/CN.4/1993/50, paras. 82-89 and

Annex II, Report of the team of experts on their mission to investigate allegations of rape in the territory of the Former Yugoslavia from 12 to 23 January 1991.

176/ HRC General Comments, *supra* note 80, No. 20, para. 5. However, the Human Rights Committee did not mention rape as a form of torture in its General Comment on article 7, CCPR.

177/ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem Do Para" (Resolution adopted at the seventh plenary session, held on 9 June 1994), AG/RES. 1257 (XXIV-O/94) (hereinafter Inter-American Convention on Violence Against Women), article 5.

178/ International and regional standards specify that violence against women impairs or nullifies the rights to life, liberty, security and integrity of person. *E.g.*, United Nations Declaration on Violence Against Women, *supra* note 169, article 3 (a), (c) (life, liberty and security); CEDAW General Recommendation, *supra* note 106, No. 19, para. 7 (a), (d) (life, liberty and security); Inter-American Convention on Violence Against Women, *supra* note 177, article 4 (a), (b), (c), (e) (life, physical, mental and moral integrity, personal liberty and security, inherent dignity of person).

179/ International and regional standards specify that violence against women impairs or nullifies the right to be free from torture and cruel, inhuman or degrading treatment and punishment. *E.g.*, United Nations Declaration on Violence Against Women, *supra* note 169, article 3(h); CEDAW General Recommendations, *supra* note 106, No. 19, para. 7 (b); Inter-American Convention on Violence Against Women, *supra* note 177, article 4 (d) (torture only).

180/ International standards specify that violence against women impairs or nullifies the right to the highest standard attainable of physical and mental health. *E.g.*, United Nations Declaration on Violence Against Women, *supra* note 169, article 3 (f); CEDAW General Recommendations, *supra* note 106, No. 19, para. 7 (g).

181/ United Nations Declaration on Violence Against Women, *supra* note 169, preambular para. 5.

182/ Article 4 (l) of the United Nations Declaration on Violence Against Women, *supra* note 169. The Declaration notes the special vulnerability of refugee women, migrant women, women living in rural or remote communities, destitute women, women in detention, and women in situations of armed conflict. *Id.*, preambular para. 7.

183/ Inter-American Convention on Violence Against Women, *supra* note 177, article 9, first sentence. This article further states that "[s]imilar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom".

184/ *E.g.*, Vienna Declaration, *supra* note 4, Part II, para. 38; Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, para. 40 (including concerns about exploitation of prostitution and trafficking in women).

185/ *See* article 2 (1) of the CCPR, article 1 (1) of the American Convention, and article 1 of the European Convention. Those treaty rights include, of course, the rights to life, liberty, security and integrity of person, and the right to freedom from torture and ill-treatment.

186/ In commenting on violence against women, the CEDAW-Committee has emphasized that "[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation". CEDAW General Recommendations, *supra* note 106, No. 19, para. 9.

187/ Article 2 (e), CEDAW.

188/ Article 5 (a), CEDAW.

189/ *See, e.g.*, article 7 of the Universal Declaration, article 26 of the CCPR, article 24 of the American Convention, article II of the American Declaration and article 3 of the African Charter. In addition, international and regional standards specify that violence against women impairs or nullifies the right to equal protection under the law. *E.g.*, United Nations Declaration on Violence Against Women, *supra* note 169, article 3 (d); CEDAW General Recommendation, *supra* note 106, No. 19, para. 7 (e); Inter-American Convention on Violence Against Women, *supra* note 177, article 4 (f).

190/ In certain situations, prostitution serves as one of the few forms of economic support for women heads of households separated from male family members either during flight or as a result of violence before displacement. At the root of this phenomenon there is often a discriminatory allocation to men of essential food, water and non-food items.

191/ *See, e.g.*, Preliminary Report submitted by the Special Rapporteur on Violence Against Women, its causes and consequences, United Nations document E/CN.4/1995/42 (1994) (hereinafter Preliminary Report on Violence Against Women), paras. 210-219.

192/ CEDAW General Recommendation, *supra* note 106, No. 19, para. 24 (g) and (h). The refugee law standards discussed *supra* are also relevant by analogy.

193/ *Accord* Report of the Second International Workshop on National Institutions for the Promotion and Protection of Human Rights, meeting at Tunis, 13-17 December 1993, United Nations document E/CN.4/1994/45, 23 December 1993 (measures to eliminate sexual exploitation of children).

194/ *E.g.*, 1993 Progress Report, supra note 111. The note on Certain Aspects of Sexual Violence against Refugee Women sets forth provisions of human rights and humanitarian law implicated in gender-specific violence. Note on Certain Aspects of Sexual Violence against Refugee Women, United Nations document EC/1993/SCP/CRP.2 (1993) (hereinafter Note on Sexual Violence) paras. 26-30. UNHCR has defined sexual violence as "any act - or threat to commit an act - of violence which involves the sexual abuse or exploitation of its victim against her will". Forms of gender-specific violence specified include rape, sexual extortion and forced prostitution, and the application of protective measures to men and boys is explicitly provided. *Id.*, para. 6.

195/ *E.g.*, UNITED NATIONS HIGH COMMISSION FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 73 (XLIV); REFUGEE PROTECTION AND SEXUAL VIOLENCE (1993) (hereinafter EXCOM CONC. NO. 73); EXCOM CONC. NO. 64, *supra* note 110, para. vii; Note on Sexual Violence, *supra* note 194, paras. 33, 34, and 38 (e); Sexual Violence against Refugees: Guidelines on Prevention and Response, at 49-57 (UNHCR, 1995) (hereinafter Sexual Violence Guidelines).

196/ Policy on Refugee Children, *supra* note 111, para. 12; Sexual Violence Guidelines, *supra* note 195, at 54.

197/ *See* the list of non-derogable rights *supra* para. 34.

198/ *See* article 4 of the Statute of the International Tribunal for Rwanda, *supra* note 75.

199/ There is international precedent for prosecuting violators of humanitarian law rules that were not expressly made punishable in relevant instruments. The International Military Tribunal, in rejecting the claims of accused war criminals that they could incur no criminal liability for acts not typified as crimes under international law, stated: "[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced". 1 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL (Nuremberg, 1947) 223.

200/ Emphasis added.

201/ Article 27, para. 3 of the Fourth Geneva Convention.

202/ *See* NEW RULES, *supra* note 118, at 469-70, *citing* article 72 of Protocol I (referring to "other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict") and *comparing* article 27, para. 2 of the Fourth Geneva Convention.

203/ Final Report of the Commission of Experts established pursuant to Security Council resolution 780 (1992), Annex to Letter dated 24 May 1994 from the Secretary-General to the President of the Security Council, United Nations document No. S/1994/674 (27 May 1994) (hereinafter *Final Report of the Commission of Experts*), para. 105.

204/ In the case of a grave breach, the perpetrator must be a person linked to one of the parties to the conflict and the victim must be linked to another party to the conflict or must be a citizen of a neutral State. *Final Report of the Commission of Experts, supra* note 203, paras. 105-106.

205/ *See supra* paras. 137-8. The International Military Tribunal in Tokyo has already prosecuted rape as a war crime.

206/ ICRC, Aide-Memoire of 3 December 1992, quoted by *Meron, Rape as a Crime under International Humanitarian Law, 87* AMERICAN JOURNAL OF INTERNATIONAL LAW 1993, at 426.

207/ *See* COMMENTARY ON THE FOURTH GENEVA CONVENTION, *supra* note 74, at 598, recognizing that the grave breach of "inhuman treatment" should be interpreted in the context of article 27 of the same Fourth Geneva Convention, which also prohibits rape.

208/ Accord *Paris Minimum Standards, supra* note 29, sect. C, article 5, stating that "[n]o one shall be deprived of his right to liberty ... except on such grounds and in accordance with such procedures as are established by law".

209/ Article 9 (1) of the CCPR, article 37 (b) of the CRC, article 7 (2) of the American Convention, article 5 (1) of the European Convention, and article 6 of the African Charter.

210/ *See, e.g.*, Report of the Working Group on Arbitrary Detention, United Nations document E/CN.4/1992/20 (21 January 1992) (hereinafter *Report of the Working Group*), para. 10. A broad interpretation of the term "arbitrary" is supported by the 1964 Commission on Human Rights Study of the right of everyone to be free from arbitrary arrest, detention and exile, United Nations document E/CN.4/826/Rev.1, at 7, para. 27 (1964).

211/ Provisions for a fair trial are considered part of the international standards which, if not met, will result in a finding of arbitrary detention. *E.g., Report of the Working Group,* supra note 210, annex I, para. 6 (category III of cases considered by the Working Group).

212/ Rights to a fair trial and to due process in the course of criminal proceedings are also guaranteed to internally displaced persons. These guarantees are, however, not discussed in this report as this right is of little relevance for persons because they are internally displaced.

213/ The question of whether internally displaced persons can be obligated to live in an open camp is one relating to the freedom of movement.

214/ HCR General Comments, *supra* note 80, No. 8, para. 1. In the case of Ngalula Mpandanjila and other former members of Parliament in Zaire, the Committee was also of the view that house arrest and certain forms of internal banishment constitute deprivation of liberty (Communication No. 138/1983, para. 10, (Annual Report of the Human Rights Committee 1986, 121). Under article 5 of the European Convention, the European Court on Human Rights considered banishment to a small island (2.5 km^2) to be detention as the social contacts of the banished person were restricted to contacts with other inmates and the guards (Guzzardi Case II, Judgement of 6 November 1980, Series A, No. 39, para. 95). In contrast, banishment to a remote village in the mountains with the obligation to report to the police post in the next town were not considered to amount to detention: (Guzzardi case I, unpublished report of the European Commission on Human Rights of 5 October 1970, Application 7960/77).

215/ *See e.g.*, the Committee's view on Communication 305/1988 (van Alphen v. the Netherlands) para. 5.8, (Annual Report of the Human Rights Committee 1990, 115) and Nowak, Commentary, *supra* note 67, 172-3.

216/ Executive Committee Conclusion No. 44 (XXXVII), Detention of Refugees and Asylum-Seekers (1986), para. (b).

217/ GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 86-88, which also prescribe strict standards for conditions of detention citing to provisions of the CRC.

218/ EXCOM CONC. No. 47, *supra* note 110, para. e.

219/ Article 42 is located in Section II of Part III of the Fourth Convention, entitled: Aliens in the Territory of a Party to the Conflict.

220/ This provision applies only to persons who are affected by the armed conflict, who are in the power of a party to the conflict and who otherwise do not benefit from more favourable treatment under the Geneva Conventions or Protocol I.

221/ Regarding children, article 35 CRC addresses the abduction of children. *See supra* para. 94.

222/ International Convention against the Taking of Hostages, *adopted* 17 December 1979, annexed to General Assembly resolution 146, United Nations GAOR, Thirty-fourth Session, Supp. No. 46, at 245, United Nations document A/34/46 (1980), *entered into force* 4 June 1983 and ratified by 76 States on 22 October 1995 (hereinafter Hostage Taking Convention). Hostage-taking is defined in article 1 (1) as follows:

> "1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the 'hostage') in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ('hostage-taking') within the meaning of this Convention."

223/ Article 13 of the Hostage Taking Convention reads as follows:

> "This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State."

224/ In such situations, the requirements of the Hostage Taking Convention do not apply because of the provision of article 12 which gives deference to humanitarian law. In contrast, it is applicable in so far as the Fourth Convention and/or Protocol I do not apply to an inter-State armed conflict. *See* JOSEPH J. LAMBERT, TERRORISM AND HOSTAGES IN INTERNATIONAL LAW - A COMMENTARY ON THE HOSTAGES CONVENTION 1979, at 265 et seq. (1990).

225/ *See* Annual Report on internally displaced persons, submitted pursuant to Commission on Human Rights resolution 1993/95, Addendum: Profiles in displacement: Sri Lanka, E/CN.4/1994/44/Add.1, para. 73.

226/ A draft optional protocol to the Children's Convention on children in armed conflict prohibits compulsory recruitment of children below 18 years of age. Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, United Nations document E/CN.4/1995/96, 10 February 1995, Annex, article 2. In addition, the Human Rights Committee has interpreted article 24 of the CCPR to require information from States parties on "measures adopted to ensure that children do not take a direct part in armed conflicts." HRC General Comments, supra note 80, No. 17, paragraph 3.

227/ View on Communication No. 295/1988 (Aapo Järvinen v. Finland), paragraphs 6.1-6.6 (Annual Report of the Human Rights Committee 1990, United Nations document A/45/40, Vol. II, at 104-5). HCR General Comments, supra note 80, No. 22, paragraph 11.

In addition, the Committee "believes" that the right of conscientious objectors to a national service outside the armed forces "can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience ..." HCR General Comment, *supra* note 80, No. 22, paragraph 11. In its views on Communication 446/1991 (J.P. c. Canada), paragraph 4.2 (Annual Report of the Human Rights Committee 1992, 434), the Committee, in a *obiter dictum*, stated that "conscientious objection to military activities ..." was "certainly" protected by article 18.

228/ *See supra* paragraph 52 concerning discrimination of internally displaced persons.

229/ EXCOM CONC. NO. 47, *supra* note 110, paragraph (e); EXCOM CONC. NO. 59, *supra* note 110, paragraph (h); Guidelines on Refugee Children, *supra* note 111, at 85.

230/ *See e.g.*, article 4 of the Universal Declaration, and, in substantially similar terms, article 8 (1) and (2) of the CCPR, article 6 (1) of the American Convention, article 4 (1) of the European Convention, and article 5 of the African Charter.

231/ *See* article 4 (2) of the CCPR, article 27 (2) of the American Convention, and article 15 (2) of the European Convention. According to the *Siracusa Principles*, *supra* note 29, the right not to be held in slavery or involuntary servitude is non-derogable (para. 58) and its denial is prohibited by customary international law in all circumstances (para. 69). Likewise, the *Paris Minimum Standards*, *supra* note 29, absolutely prohibit slavery, servitude and slave trade in all their forms (art. 2).

232/ Slavery Convention, signed at Geneva 25 September 1926, *entry into force* 9 March 1927, as amended by the Protocol on 7 December 1953 (the amended Convention entered into force 7 July 1955); Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, *approved* by General Assembly resolution 794 (VIII) of 23 October 1953, *entry into force* 7 December 1953.

233/ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery adopted by a Conference of Plenipotentiaries convened by ECOSOC resolution 608 (XXI) of 30 April 1956 and done at Geneva on 7 September 1956, *entry into force* 30 April 1957, article 9.

234/ *Accord* Vienna Declaration, *supra* note 4, Part II, paragraph 48 (need to address exploitation and abuse of children in difficult circumstances).

235/ Compilation of the Conclusions and Recommendations adopted by the Committee on the Rights of the Child, United Nations document CRC/C/19/Rev.4 (1995), Sixth Session, Recommendation 3, paragraph 8.

236/ GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 126-28. The Guidelines also provide measures to address child labour. *Id.*, at 84.

237/ For a discussion of a government's corollary responsibility to care for victims of violence or disasters by meeting their subsistence needs, and the right of the international community to offer humanitarian relief to the victims of disasters, *see infra*, paragraphs 360-389.

238/ Similarly, paragraph 1 of the Universal Declaration on the Eradication of Hunger and Malnutrition, *supra* note 28, declares, in relevant part, that "[e]very man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties." Recently, States reaffirmed their commitment to assist people living in poverty in the realization of subsistence rights. Copenhagen Declaration adopted by the World Summit for Social Development, Copenhagen, 6-12 March 1995 (Advance Unedited Text) (hereinafter Copenhagen Declaration), paragraph 20 and Commitment 1 (f).

239/ In addition, States parties to the CERD undertake to guarantee to each person, without discrimination, equality in the enjoyment of the right to housing (art. 5 (e) (iii) CERD)).

240/ See also, Resolution on Women and Food, General Assembly resolution 37/59 (1982), cited in HUMAN RIGHTS STUDIES SERIES: RIGHT TO ADEQUATE FOOD AS A HUMAN RIGHT, United Nations Sales No. E.89.XIV.2, n.52 (1989) (hereinafter RIGHT TO FOOD STUDY).

241/ HRC General Comments, *supra* note 80, No. 17, paragraph 3.

242/ *See also,* standards for adequate nutrition for infants, including International Code of Marketing of Breastmilk Substitutes, adopted in May 1981 as a Recommendation under article 23 of its constitution by the WHO conference, *cited as such in* RIGHT TO FOOD STUDY, *supra* note 240, at n.42.

243/ World Declaration and Plan of Action on Children, *supra* note 95, paragraph 10 (World Declaration) and at 13-14 (Plan of Action).

Another vulnerable group, the elderly are explicitly protected by regional law. *See* article 17 of the Protocol of San Salvador which explicitly addresses the "right to special protection in old age." In this regard, States parties agree, inter alia, to "provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves" (art. 17 (a)). Article 18 of the African Charter guarantees "[t]he aged ... the right to special measures of protection in keeping with their physical or moral needs."

244/ In addition, the obligation to provide for the subsistence needs of prisoners, including food and clothing, is recognized in the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, at Principles 17-20.

245/ Furthermore, article 17 of the Protocol of San Salvador explicitly addresses the "right to special protection in old age." In this regard, States parties agree to, inter alia, "provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves" (article 17 (a)).

246/ CESCR General Comments, *supra* note 63, No. 3, paragraph 10.

247/ CESCR General Comments, *supra* note 63, No. 3, paragraph 10.

248/ *Id.*

249/ *Id.*, at paragraph 13, noting the inclusion of "international assistance and cooperation" in the undertaking of States parties under article 2 (1).

250/ Robert Robertson, *Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social, and Cultural Rights*, 16 HUMAN RIGHTS QUARTERLY 692, 698-701 *citing, inter alia*, The Realization of Economic, Social and Cultural Rights: Realization of Economic, Social and Cultural Rights; Second Progress Report Prepared by Danilo Turk, Special Rapporteur, United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 43rd Session, Provisional Agenda Item 9, at 18, United Nations document No. E/CN.4/Sub.2/1991/17 (1991); Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, United Nations Commission on Human Rights, 43rd Session, Annex, Provisional Agenda Item 8, 18, at 3, paragraph 25, United Nations document No. E/CN.4/1987/17 (1987). Three levels of State obligations have been identified: (1) the obligation to respect, that is, avoid depriving individuals of resources; (2) the obligation to protect from deprivation; and (3) the obligation to fulfil the need, essentially to aid the deprived. *E.g.*, RIGHT TO FOOD STUDY, *supra* note 240, at paragraphs 169-181.

251/ HRC General Comments, *supra* note 80, No. 6, paragraph 5.

252/ CESCR General Comments, *supra* note 63, No. 4, paragraph 1.

253/ *Id.*, paragraph 6.

254/ *Id.*, paragraph 7.

255/ These facilities explicitly include "sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services." *Id.*, paragraph 8 (b).

256/ *Id.*, paragraph 8 (a)-(g).

257/ As to housing, refugees who are lawfully in the country must be treated as favorably as possible, but no less favorably than other aliens in generally the same circumstances (art. 21 of the Refugee Convention). As internally displaced persons are usually not aliens, such treatment would constitute unlawful discrimination.

258/ *See* GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN, *supra* note 111, at 16, 19, 30, stressing that long-term refugee situations require "[a]ssistance policies that ensure that single refugee women and women-headed households gain access to food, shelter, health care, clean water, firewood, etc.". *See also*, Policy on Refugee Women, *supra* note 111, paragraph 9; Review of the Implementation and Impact of UNHCR's Policy on Refugee Women, UNHCR document EVAL/FEM/13 (1993), paragraphs 2-3; 1993 Progress Report, *supra* note 111, paragraphs 24-30.

259/ *E.g.*, EXCOM Conc. No. 47, *supra* note 110, paragraph q.

260/ CESCR General Comments, *supra* note 63, No. 3, paragraph 10. *See also*, *supra* paragraph 184.

261/ CESCR General Comments, *supra* note 63, No. 3, paragraph 10.

262/ For example, paragraph 6 of the Declaration on the Protection of Women and Children (*supra* note 28) takes this position by stating that women and children "shall not be deprived of shelter, food, medical aid or other inalienable rights." For a discussion of derogation in general, *see supra* paragraphs 33-36.

263/ Likewise, the DECLARATION BY THE INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW, *supra* note 115, states that "[t]he general rule prohibiting attacks against the civilian population implies, as a corollary, the prohibition to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population" (General Rules, A (7)).

264/ *See* NEW RULES, *supra* note 118, at 645.

265/ Such treatment must be in accordance with article 4 of Protocol II, and with paragraphs 1 (a), (c) and (d), and 2 (b) of article 5 of Protocol II. *See* NEW RULES, *supra* note 118 at 647, which in this respect state as follows:

> "Under *paragraph 3* the persons defined above under 2.1 also enjoy certain rights guaranteed to detained and interned persons. The choice made is apparently based on the concept that they have at their disposal the basic material necessities of life. This may be questionable. Apart from the guarantee that they can receive individual and collective relief, no safeguard is given that necessary food and water will be allowed to be brought into these areas."

266/ In effect, this creates a new rule which, while arguably not yet customary law, nevertheless has been accepted by some States as such. For example, the United States has declared this to be a rule of customary law. *See* Dupuis et al., *The United States Position on the Relation of Customary International Law to the 1977 Protocols Addition to the 1949 Geneva Conventions - Remarks of Michael J. Matheson*, 2 AMERICAN UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 419, 426 (1987).

267/ COMMENTARY, *supra* note 44, at 653.

268/ *See* NEW RULES, *supra* note 118, at 339.

269/ Specifically, article 54 (3) (a) permits attacks on supplies of foodstuffs which are intended for the sole use of the enemy's armed forces as long as such supplies are not intended to provide sustenance for prisoners of war, the civilian population of an occupied territory or persons classified as civilians who are serving with or accompanying the armed forces. *See* NEW RULES, supra note 118, at 340-41.

270/ Subparagraph 3 (b) of article 54 entails another situation of loss of protection. This exception permits attacks against objects when used for a purpose other than the subsistence of the enemy's forces and such use is "in direct support of military action." The Commentary states that this term refers to the following kinds of military operations: "bombarding a food-producing area to prevent the army from advancing through it, or attacking a food-storage barn which is being used by the enemy for cover or as an arms depot etc." *See* COMMENTARY, *supra* note 44, at 657. The NEW RULES give the following examples of direct support: "an irrigation canal used as part of a defensive position, a water tower used as an observation post, or a cornfield used as cover for the infiltration of an attacking force." *See* NEW RULES, *supra* note 118, at 341.

271/ Finally, article 70 of Protocol I requires that humanitarian and impartial relief actions must be undertaken for civilians lacking essential supplies in any territory under the control of a belligerent party, other than in occupied territory, as well as within the territories of the parties to the conflict. Such relief actions must be given speedy and unimpeded passage, without delay (article 70 (2) and (3) of Protocol I).

272/ *See also*, Vienna Declaration, *supra* note 4, Part I, paragraph 31 (rights of everyone to adequate standard of living, and food not to be used as a tool for political pressure).

273/ Reaffirmation of the significance of this right was issued by the Declaration of Alma-Ata, reaffirming in paragraph I "that health, which is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, is a fundamental human right." INTERNATIONAL CONFERENCE ON PRIMARY HEALTH CARE, DECLARATION OF ALMA-ATA, 12 September 1978.

274/ Under article 5 (e) (iv) of the CERD, States parties undertake to guarantee to each person, without discrimination, equality in the enjoyment of the right to public health, medical care and social services.

275/ The need for girls, in particular, to gain access to health care and health education was addressed by the World Summit for Social Development, Copenhagen Declaration, *supra* note 238, at Commitment 6, passim.

276/ *See* World Health Organization, Human Rights in relation to Women's Health (1993), at 25-52 and Table II (1993) (identification of human rights applicable to women's health). For a discussion of the interrelationship of maternal and child health needs, *see, e.g.*, World Declaration and Plan of Action on Children, *supra* note 95, paragraphs 15-17 (Plan of Action).

277/ *E.g.*, EXCOM CONC. NO. 73, *supra* note 195, paragraph f; EXCOM 1994 Report, *supra* note 57, paragraph 22(b); GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN, *supra* note 111, paragraphs 89-102; 1993 Progress Report, *supra* note 111, paragraphs 19-23.

278/ GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 19-20, 62-66, 68-69.

279/ CESCR General Comments, *supra* note 63, No. 3, paragraph 10. This view is largely consistent with the Declaration on the Protection of Women and Children, *supra* note 28, which states in paragraph 6 that women and children "shall not be deprived of ... medical aid or other inalienable rights."

280/ Because Protocol II does not contain a separate article for definitions, the definitions in article 8 of Protocol I can serve as a guide for the interpretation of terms used in Protocol II. COMMENTARY, *supra* note 44, paragraph 4631 at 1405. Article 8 (a) of Protocol I defines "wounded" and "sick" as "persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility."

281/ NEW RULES, *supra* note 118, at 108.

282/ *See generally* The human rights dimensions of population transfer, including the implantation of settlers, Progress report of Mr. Awn Shawhat Al-Khasawneh, Special Rapporteur, United Nations document E/CN.4/Sub.2/1994/18 of 30 June 1994, paragraphs 65-76 (hereinafter Progress report on population transfer).

283/ Article 18, paragraph 1 of the Fourth Geneva Convention states: "Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict."

284/ Of possible relevance to internally displaced persons is the medical attention owed to internees (art. 91) and the conditions for the transfer of sick, wounded or infirm internees and maternity cases (art. 127). Finally, according to article 132 of the Fourth Convention, wounded and sick internees shall, if possible, be released, repatriated, returned to their place of residence or accommodated in a neutral country.

285/ Finally, article 85 of Protocol I labels an act committed against the wounded, sick and shipwrecked of the adverse party, who are protected by Protocol I, as a grave breach of Protocol I, provided that such act constitutes a grave breach under the Geneva Conventions.

286/ Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by General Assembly resolution 48/96 of 20 December 1993 (hereinafter Disability Rules).

287/ Although no definition of disability has been universally accepted, the Disability Rules, *supra* note 286, state that "the term 'disability' summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature."

288/ The Disability Rules, *supra* note 286, aim "to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others ... [free of] ... obstacles preventing ... [the exercise of such rights and obligations] ... and making it difficult for them to participate fully in the activities of their societies. It is the responsibility of States to take appropriate action to remove such obstacles." (*Id.*, para. 15)

Of particular significance to disabled people are, for example, the right to the highest attainable standard of physical and mental health, the right to freedom of movement and residence and the right to freedom from torture and cruel, inhuman or degrading treatment or punishment, which includes freedom from being subjected, without one's free consent, to medical or scientific experimentation.

289/ CESCR General Comment, No. 5, *supra* note 96, para. 5.

290/ *Id.*, paras. 19, 31.

291/ *Id.*, para. 32.

292/ Aart Hendriks, *Disabled Persons and their Right to Equal Treatment: Allowing Differentiation While Ending Discrimination*, 1 HEALTH AND HUMAN RIGHTS, No. 2, 153, 163. - Thus, assisting devices, accessible facilities and medical and social services are considered within the scope of the duties States owe to persons with disabilities, including the internally displaced.

293/ *Supra*, paras. 203-06.

294/ For example, articles 16-18, 21-22 and 127 para. 3 of the Fourth Geneva Convention.

295/ Concerning the need to further research the content of a right to be protected against displacement, *see supra* para. 11.

296/ Restrictions on freedom of movement can also be a problem for those searching for water, firewood or other essentials outside the camps. GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN, *supra* note 111, at 9. The restrictions described here have to be distinguished from detention in closed camps discussed *supra* paras. 150-53.

297/ Article 26 of the Refugee Convention grants refugees "the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances." This provision is of no relevance to internally displaced persons as they most often are citizens of the country concerned and, therefore, should not be treated like aliens.

298/ The right is guaranteed under the CCPR and the Fourth Protocol to the European Convention for "[e]veryone lawfully within the territory of a State." The American Convention guarantees the right for "[e]very person lawfully in the territory of a State Party."

299/ The right to be free from racial discrimination in exercising the freedom of movement and residence within the borders of one's own State is guaranteed in article 5 (d) (i) of the CERD.

300/ Convention concerning Indigenous and Tribal Peoples in Independent Countries, ILO Convention No. 169, *entered into force* 5 September 1991, *reprinted in* INTERNATIONAL LABOUR ORGANIZATION, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS, 1919-1991 (1992) (hereinafter ILO Convention No. 169), Vol. II, ratified by seven States on 1 January 1995.

301/ CSCE Concluding Document of the Vienna Meeting on the Follow-up to the Conference, 15 January 1989, *reprinted in* COUNCIL OF EUROPE, HUMAN RIGHTS IN INTERNATIONAL LAW: BASIC TEXTS (Strasbourg, 1991), para. 20 (right of movement and residence within borders of each State); CSCE Copenhagen Declaration, *supra* note 238, para. 9.5 (right to leave any country and return to one's own country); San Jose Declaration, *supra* note 4, Recommendation 16 (e). The OAU/UNHCR Symposium, *supra* note 4, applied the right to not be arbitrarily relocated to all situations under its Recommendation 13.

302/ Sub-Commission resolution 1994/24, para. 1, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-Sixth Session, Geneva, 1 - 26 August 1994, United Nations document E/CN.4/Sub.2/1994/56, 28 October 1994 at 67. *See also,* resolution 1995/13, para. 1, Report of the Sub-Commission on its Forty-Seventh Session, Geneva, 25-31 August 1995, United Nations document E/CN.4/Sub.2/1995/L.11/Add.3.

303/ Article 3 (1) of the Fourth Protocol to the European Convention and article 22 (5) of the American Convention prohibit the expulsion of a national from the territory of his/her country, while article 3 (1) of the Fourth Protocol to the European Convention adds the prohibition of collective expulsion of such persons.

304/ Article 22 (9) of the American Convention, article 4 of the Fourth Protocol to the European Convention and article 12 (5) of the African Charter prohibit the collective expulsion of aliens while other instruments, such as the ICCPR (art. 13) and the Seventh Protocol to the European Convention, set forth conditions for the lawful expulsion of individual aliens.

305/ CESCR General Comments, *supra* note 63, No. 4, para. 18.

306/ In addition, *see also*, CEDAW General Recommendations, *supra* note 106, No. 21, para. 9, where, in commenting on the right to equality of women with men before the law, the CEDAW Committee has emphasized a woman's right to choose her domicile at will regardless of marital status.

307/ *Siracusa Principles*, *supra* note 29, para. 10.

308/ *See also*, TURKU/ABO DECLARATION, *supra* note 29, article 7, which reads as follows:

> "1. All persons have the right to remain in peace in their homes and their places of residence.
>
> 2. The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacement have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Persons or groups thus displaced shall be allowed to return to their homes or their places of residence as soon as the conditions which made their displacement imperative have ceased. Every effort shall be made to enable those so displaced who wish to remain together to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the territory, subject only to the safety of the persons involved or reasons of imperative security.
>
> 3. No person shall be compelled to leave their own territory."

309/ Reasons of public health or public order are also required to restrict the movement of asylum-seekers who have been temporarily admitted pending arrangements for a durable solution. *See* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 22 (XXXII), PROTECTION OF ASYLUM-SEEKERS IN SITUATIONS OF LARGE-SCALE INFLUX (1981). Concerning the relocation of indigenous peoples, *see* ILO Convention No. 169, *supra* note 300.

310/ *See* COMMENTARY, *supra* note 44, at 1472-73, finding that the forced displacement of civilians is prohibited unless the Government may show that (a) the security of the population so demands or (b) a meticulous assessment of the military circumstances so demands displacement of the internal population.

311/ For the definition of the term "protected persons" *see supra* para. 44.

312/ Article 58 of Protocol I deals with precautions against the effects of attacks and reads in relevant part:

"The Parties to the conflict shall, to the maximum extent feasible:

(a) Without prejudice to Article 49 of the Fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; ...

(c) Take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations."

313/ Article 51 (7) of Protocol I is cited *supra* in para. 163.

314/ NEW RULES, *supra* note 118, at 317.

315/ The right to seek asylum (*infra*, paras. 236-41) only refers to refuge outside the country of origin or habitual residence of the person concerned: *see* article 1A, para. 2 Refugee Convention.

316/ *See also*, article 5 (d) (ii) of the CERD, in which States Parties commit themselves "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone ... to equality before the law, notably in the enjoyment of ... the right to leave any country, including one's own."

317/ *See* article 12 (3) of the CCPR, article 22 (3) of the American Convention and article 2 (3) of the Fourth Protocol to the European Convention, discussed *supra* para. 228. Article 12 (2) of the African Charter, which provides for the right to leave any country including one's own and to return to one's country, allows this right to be "subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality." The Strasbourg Declaration on the Right to Leave and Return, requires that "[a]ny such restriction shall be narrowly construed" and provides strict guidelines for the interpretation of restrictions imposed on the right to leave. Strasbourg Declaration on the Right to Leave and Return, *adopted* on 26 November 1986, *reprinted in* Hurst Hannum, *Current Development: The Strasbourg Declaration on the Right to Leave and Return*, 81 AMERICAN JOURNAL OF INTERNATIONAL LAW 432, 435 (1987), (hereinafter *Strasbourg Declaration*).

318/ *See also*, the address of the High Commissioner for Refugees, Sadako Ogata, who stressed that "any attempt to develop protection standards for the internally displaced should take care not to undermine the existing obligations of refugee law, particularly that of asylum and non-refoulement." Address by Sadako Ogata, *in* NORWEGIAN GOVERNMENT ROUND-TABLE DISCUSSION ON UNITED NATIONS HUMAN RIGHTS PROTECTION FOR INTERNALLY DISPLACED PERSONS 84 (1993). Options for protection other than asylum, such as safe haven or temporary protected status, should be available to the internally displaced to the same extent as those options are available to other people.

319/ Proposals for the inclusion of similar provisions in the two International Covenants were rejected "partly because of the difficulty of reaching agreement on the categories of persons who should be granted asylum." United Nations, THE UNITED NATIONS AND HUMAN RIGHTS 58 (1978).

320/ Finally, the Declaration on Territorial Asylum reinforces the right to seek and enjoy asylum, recognizing in its Preamble "that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State." Declaration on Territorial Asylum, *adopted by* General Assembly resolution 2312 (XXII), United Nations General Assembly OR, twenty-second session, Supp. No. 16, at 81, United Nations document A/6716 (1968) (hereinafter Declaration on Territorial Asylum).

Regional expert declarations safeguard the right to leave one's country and seek asylum in the context of protection of the internally displaced and, in Africa, despite the existence of safety zones (San José Declaration, *supra* note 4, Recommendation 17; Harare Conclusions, *supra* note 4, at 4).

321/ Vienna Declaration, *supra* note 4, Part I, para. 23.

322/ Article 73 of Protocol I provides:

> "Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction."

323/ *See* NEW RULES, *supra* note 118, at 446. Article 73 of Protocol I considerably improved the limited protection these refugees are entitled to under article 70 of the Fourth Convention. The NEW RULES note in this regard: "Among the new benefits they will enjoy as protected persons is the immunity provided by the first paragraph of article 70 against arrest, prosecution or conviction for acts committed or opinions expressed *before the occupation*, excepting only breaches of the laws and customs of war. Thus, the reach of a Party's treason laws against its dissident nationals who became refugees before the outbreak of hostilities is substantially reduced." *Id.*, at 449.

324/ Frequently, internally displaced persons return to find their properties occupied by other people. This barrier to return is dealt with *infra*, paras. 269-84.

325/ *See* Vienna Declaration, *supra* note 4, Part I, para. 23, emphasizing the importance of "finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation."

326/ *See supra*, paras. 222-26.

327/ United Nations Security Council resolution 876 (1993) of 19 October 1993 on the situation in Abkhazia.

328/ Sub-Commission resolution 94/24, *supra* note 302, para. 2.

329/ Article 6 (b) of the *Strasbourg Declaration, supra* note 317, states that "[n]o person shall be deprived of nationality or citizenship in order to exile or to prevent that person from exercising the right to enter his or her country."

330/ The right to return to one's country was reaffirmed by the World Conference on Human Rights. *See* Vienna Declaration, *supra* note 4, Part I, para. 23.

331/ *See also,* article 5 (d) (ii) of the CERD, stating that States parties "undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone ... to equality before the law, notably in the enjoyment of ... the right ... to return to one's country."

332/ The right to return is extended without limitation under the OAU/UNHCR Symposium, *supra* note 4, Recommendation 13.

333/ *See* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 46 (XXXVIII) GENERAL (1987), para. (1); EXECUTIVE COMMITTEE CONCLUSION NO. 58 (XL) PROBLEM OF REFUGEES AND ASYLUM-SEEKERS WHO MOVE IN AN IRREGULAR MANNER FROM A COUNTRY IN WHICH THEY HAD ALREADY FOUND PROTECTION (1989), para. (d) (ii); EXECUTIVE COMMITTEE CONCLUSION NO. 67 (XLII) RESETTLEMENT AS AN INSTRUMENT OF PROTECTION (1991), para. (g).

334/ *See* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 18 (XXXI) VOLUNTARY REPATRIATION (1980), which states in relevant parts:

> *The Executive Committee,*
>
> (a) *Recognized* that voluntary repatriation constitutes generally, and in particular when a country accedes to independence, the most appropriate solution for refugee problems;
>
> (b) *Stressed* that the essentially voluntary character of repatriation should always be respected;
>
> (c) *Recognized* the desirability of appropriate arrangements to establish the voluntary character of repatriation ...
>
> (e) *Recognized* the importance of refugees being provided with the necessary information regarding conditions in their country of origin in order to facilitate their decision to repatriate; ...
>
> (f) *Called* upon Governments of countries of origin to provide formal

guarantees for the safety of returning refugees and stressed the importance of such guarantees being fully respected and of returning refugees not being penalized for having left their country of origin for reasons giving rise to refugee situations.

See also, EXECUTIVE COMMITTEE CONCLUSION NO. 40 (XXXVI) VOLUNTARY REPATRIATION (1985), reaffirming the 1980 conclusion "as reflecting basic principles of international law and practice" and adopting the following further conclusions:

> "(a) The basic rights of persons to return voluntarily to the country of origin is reaffirmed and it is urged that international cooperation be aimed at achieving this solution and should be further developed;
>
> (b) The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected; ...
>
> (d) The responsibilities of States towards their nationals and the obligations of other States to promote voluntary repatriation must be upheld by the international community. International action in favour of voluntary repatriation, whether at the universal or regional level, should receive the full support and co-operation of all States directly concerned. Promotion of voluntary repatriation as a solution to refugee problems similarly requires the political will of States directly concerned to create conditions conducive to this solution. This is the primary responsibility of States; ...
>
> (h) The importance of spontaneous return to the country of origin is recognized and it is considered that action to promote organized voluntary repatriation should not create obstacles to the spontaneous return of refugees ...
>
> (k) ... Assistance for the reintegration of refugees provided by the international community in the country of origin is recognized as an important factor in promoting repatriation ..."

335/ EXCOM CONCLUSION NO. 73, *supra* note 195, para. c; 1993 Progress Report, *supra* note 111, paras. 50-55.

336/ GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 138-44.

337/ *See also*, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, *supra* note 49, article II (3), providing that "[n]o person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened ..." Likewise, the Declaration of Cartagena, *supra* note 50, para. 5, reiterates "the importance and significance of the principle of non-return (including the prohibition of rejection at the borders), as a cornerstone of the international protection of refugees. This operative principle concerning refugees should be recognized and respected in the present State of international law, as a principle of jus cogens." *See also*, the Declaration on Territorial Asylum, *supra* note 320, stating in article 3 (1) that an asylum-seeker shall not "be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution."

The Progress report on population transfer, *supra* note 282, para. 52, states that the principle of non-refoulement "arguably is a norm of customary international law, as evidenced by its inclusion in article 3" of the CAT (*supra*, para. 249).

338/ *See* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 6 (XXVIII) NON-REFOULEMENT (1977), para. (c), which reaffirmed "the fundamental importance of the observance of the principle of *non-refoulement* - both at the border and within the territory of a State - of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees." *See also*, EXECUTIVE COMMITTEE CONCLUSION NO. 25 (XXXIII) GENERAL (1982), para. (b), reaffirming "the importance of the basic principles of international protection and in particular the principle of *non-refoulement* which was progressively acquiring the character of a peremptory rule of international law." *See also*, EXECUTIVE COMMITTEE CONCLUSION NO. 15 (XXX) REFUGEES WITHOUT AN ASYLUM COUNTRY (1979), para. (b), which states the general principle that "[a]ction whereby a refugee is obliged to return or is sent to a country where he has reason to fear persecution constitutes a grave violation of the recognized principle of *non-refoulement*."

339/ The San José Declaration recognizes the need for internally displaced persons "to attain an honourable and safe solution to their displacement situation." San José Declaration, supra note 4, Recommendation 16 (e).

340/ HRC General Comments, *supra* note 80, No. 20, para. 9; similar views of the Human Rights Committee in respect of communication No. 469/1991 (Charles Chitat Ng v. Canada), adopted on 5 November 1993, para. 14.2.

341/ *Id.*, paras. 14.1 and 15.3.

342/ Cruz Varas Case, Judgment of 20 March 1991, Series A, No. 201, para. 69, quoting Soering Case, Judgment of 7 July 1989, Series A, No. 161, para. 91.

343/ Ng case, *supra* note 340, para. 16.1

344/ Cruz Varas Case, *supra* note 342, para. 69.

345/ *Id.*, para. 70.

346/ HRC General Comments, *supra* note 80, No. 20, para. 2.

347/ *See also*, TURKU/ABO DECLARATION, *supra* note 29, at article 7, *quoted supra* in note 308.

348/ Articles 35-38 and article 45 (2) and (3) deal with repatriation and return of aliens who as protected persons are present in the territory of a party to the conflict. Although article 45 (4) of this instrument prohibits, under all circumstances, the transfer of a protected person (alien) to a country "where he or she may have reason to fear persecution for his or her political opinions or religious beliefs", this guarantee is only relevant to the internally displaced by analogy; this is because its applicability is limited to transfers of protected persons (aliens) by a Detaining Power to another Power which is a party to the Convention. Other provisions of the Fourth Geneva Convention deal with the repatriation and return to the place of residence of internees and of protected persons during occupation.

349/ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *opened for signature* and ratification by General Assembly Resolution 1763 A (XVII) of 7 November 1962, *entry into force* 9 December 1964, ratified by 44 States on 1 January 1995.

350/ Supplemental Slavery Convention, *supra* note 233.

351/ Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, General Assembly Resolution 2018 (XX) of 1 November 1965.

352/ Article 24 (1) of the ICCPR.

353/ *E.g.*, article 24 (2), ICCPR; article 7 (1), CRC; article 8, Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, *adopted by* General Assembly Resolution 41/185 of 3 December 1986, *reprinted in* A Compilation of International Instruments, Vol. I (First Part), United Nations Document ST/HR/1/Rev.4 (Vol. I/Part 1) (hereinafter Declaration on the Protection and Welfare of Children) at 196. The Human Rights Committee has stated that the main purpose of registration of children is to reduce the danger of abduction, sale or trafficking in children, and the main purpose of the right to a name is to promote the recognition of a child's legal personality. HRC General Comments, *supra* note 80, No. 17, para. 7. *See also*, EXCOM CONC. NO. 47, *supra* note 110, para. (f), urging States "to take appropriate measures to register the births of refugee children born in countries of asylum."

354/ Article 24 (3) of the ICCPR; article 8, CRC. *See also*, article 8 of the Declaration on the Protection and Welfare of Children, *supra* note 353.

355/ Article 27 (2) of the American Convention.

356/ *Id.*

357/ *See, e.g.*, Stjerna Case, Judgment of 25 November 1994, Series A, No. 299-B, para. 37; Burhartz Case, Judgment of 22 February 1994, Series A, No. 280-B, para. 24; B. Case, Judgment of 25 March 1992, Series A, No. 232-B.

358/ Adequate documentation is listed among those rights essential to the survival, security and dignity of internally displaced persons in the San Jose Declaration, *supra* note 4, Rec. 16 (d).

359/ With regard to registration, the Executive Committee of UNHCR has "[r]ecognized the value of registering and issuing appropriate documentation to refugees in large-scale influx situations, and recommended that States which have not yet done so should undertake such registration and documentation programmes, where appropriate, in cooperation with UNHCR". UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 35 (XXXV) IDENTITY DOCUMENTS FOR REFUGEES (1984), para. (f).

360/ EXCOM CONC. NO. 73, *supra* note 195, para. c; EXCOM CONC. NO. 64, *supra* note 110, para. viii; 1993 Progress Report, *supra* note 111, paras. 47-49.

361/ EXCOM CONC. NO. 47, *supra* note 110, para. f; GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 103-107.

362/ *See also*, *Siracusa Principles*, *supra* note 29, para. 58, which states that the right to "recognition as a person before the law" is a non-derogable right "under any conditions even for the asserted purpose of preserving the life of the nation". Likewise, article 1 of the *Paris Minimum Standards*, *supra* note 29, provides that the right to a legal personality is non-derogable, including the right to recognition *everywhere* as a person before the law" (emphasis added). These non-derogable protections extend to the right to a name (art. 12).

363/ Articles 136-141 of the Fourth Convention deal with the Information Bureau and Central Agency. In relation to the Information Bureau, article 136 provides, in relevant part,

> "Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons who are in its power".

364/ For example, article 80 of this Convention states that "[i]nternees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status". Article 97 (6) provides that family or identity documents in the possession of internees may not be taken away without a receipt being given, that internees shall never be left without identity papers, and that, if they do not possess any identity documents, the detaining authorities must issue them special documents which will serve as their identity papers for the duration of their internment.

365/ *See also*, article 33 of Protocol I, which requires parties to a conflict to search for persons reported missing by the adverse party and to transmit all relevant information concerning missing persons to the Central Tracing Agency of the ICRC or national Red Cross Societies.

366/ With regard to the acquisition of property by refugees and other rights related thereto, article 13 of the Refugee Convention requires States Parties to treat refugees as favourably as possible but no less favourably than other aliens in similar circumstances.

367/ Article 29 (2) of the Universal Declaration.

368/ *See, e.g.*, article 8 of the Universal Declaration, and article 10 of the American Convention. Regional human rights tribunals have consistently ordered compensation for victims of human rights violations in the European and Inter-American systems. *E.g.*, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: final report submitted by Mr. Theo van Boven, Special Rapporteur, United Nations Document E/CN.4/Sub.2/1993/8 (hereinafter Compensation Study), paras. 80-86; I/A Court H.R., Aloeboetoe et al. Case. Reparations (art. 63 (1) of the American Convention on Human Rights), Judgment of 10 September 1993. Ser. C No. 15 (awarding compensation to a number of victims of human rights abuses, including surviving relatives).

In addition, the United Nations Security Council, in resolution 687(1991) decided "to create a Fund to pay compensation for claims" of those damaged by Iraq's occupation of Kuwait (para. 16). Victims of human rights violations have been recognized as eligible for compensation (*see* United Nations Compensation Commission, Governing Council Decision 1, United Nations Document S/22885, reprinted in: 30 I.L.M. 1713 (1991), paras. 10-14 and Decision 3, United Nations Document S/24589, reprinted in: 31 I.L.M. 1028 (1992).

Finally, the rules of the War Crimes Tribunal for former Yugoslavia allow the Tribunal, in conjunction with a judgement of conviction, to award the restitution of property or its proceeds to victims, even property in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty. Article 105 of the Rules of Procedure and Evidence, adopted 11 February 1994 by the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law committed in the Territory of the Former Yugoslavia since 1991, United Nations Document IT/32 (14 March 1994).

369/ Report on the situation of human rights of a segment of the Nicaraguan population of Miskito origin, OEA/Ser.L/V/II.62, document 10, rev. 3 (29 November 1983). *See also*, Operational Directive on Involuntary Resettlement, World Bank Operational Manual, OD 4.30 (June 1990) (providing for compensation for losses at full replacement cost for persons displaced involuntarily as a result of development projects that give rise to severe economic, social, and environmental problems).

370/ For a discussion of article 14 of Protocol II, *see* the previous discussion of subsistence needs *supra*, para. 189.

371/ The special protection provided by articles 59 and 60 is "... to afford the civilian population and the wounded and sick within those localities and areas effective protection against the collateral effects of attacks directed against military objectives." NEW RULES, *supra* note 118, at 375. This is to be achieved by the removal or neutralization of military objectives located in these areas by the party in control of the area. *Id.*

372/ *See also*, article 16 of the CRC (protecting, *inter alia*, against arbitrary or unlawful interference); article 11 (2) of the American Convention (protecting, *inter alia*, against arbitrary or abusive interference with a person's private life, family, home or correspondence); article 8 (1) of the European Convention (granting every individual the right "to respect for his private and family life, his home and his correspondence").

373/ Vienna Declaration, *supra* note 4, Part I, para. 21.

374/ Article 22 (2) of the CRC states that in cases "where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the [Children's] Convention". This reference includes, *inter alia*, article 20 of the CRC, which states that "[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State". This article furthermore requires States parties, in accordance with domestic legislation, to ensure alternative care for such children, which could include, *inter alia*, foster placement, adoption, or placement in a suitable institution for the child's care (paras. 2 and 3).

375/ General Assembly Resolution 187, *adopted without a vote* 15 December 1980, United Nations GAOR, thirty-fifth Session, Supp. No. 48, United Nations Document A/35/48.

376/ World Declaration and Plan of Action on Children, *supra* note 95, para. 14 (Declaration).

377/ *Id.*, para. 20 (5) (Declaration).

378/ *Id.*, para. 19 (Plan of Action).

379/ Copenhagen Programme of Action adopted by the World Summit for Social Development, Copenhagen, 6-12 March 1995 (Advance Unedited Text) para. 25.

380/ Preliminary report on Violence Against Women, *supra* note 191, ara. 295: "Family structures, which could otherwise be a basis of stability nd protection, are often radically altered in refugee situations. Separation from or loss of members of the family may lead to women becoming heads of household. With children to support and often no prior income generating experience, most of these women are dependent on external support structures, and are consequently more vulnerable to exploitation. Even when families remain intact during and after flight, the extraordinary circumstances of being refugees change the traditional dynamics of male-female relationships. Frustrations arising from such changes can result in increased incidence of domestic violence and depression".

381/ *E.g.*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, EXECUTIVE COMMITTEE CONCLUSION NO. 24 (XXXII) FAMILY REUNIFICATION (1981) (HEREINAFTER EXCOM CONC. NO. 24) (the principle of the unity of the family and humanitarian reasons requires that "every effort should be made to ensure the reunification of separated refugee families"); EXECUTIVE COMMITTEE CONCLUSION NO. 9 (XXVIII) FAMILY REUNION (1977).

382/ EXCOM CONC. NO. 47, *supra* note 110, para. d. *Accord* Policy on Refugee Children, *supra* note 111, para. 26 (b) ("[p]reserving and restoring family unity are of fundamental concern").

383/ GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 43. Such support has included measures to protect and assist refugee mothers, trace parents, provide extra help to single or isolated parents, organize parental support networks, and prepare families for reunion. *Id.*, at 43-44, 128-29.

384/ EXCOM 1994 Report, *supra* note 57, Conc. B2, para. 23 (h).

385/ Every effort to trace parents or close relatives must be made before resettlement or adoption are considered and, in the interim, physical and emotional support as well as training must be provided. EXCOM CONC. NO. 24, *supra* note 381, para. 7; EXCOM CONC. NO. 47, *supra* note 110, para. i; GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 130-34, 146-48.

386/ According to the NEW RULES, consent of the Protecting Power is only required for children "who are 'protected persons' in occupied territories or non-repatriated aliens in domestic territory". NEW RULES, *supra* note 118, at 482 & n.1.

387/ If security concerns are presented, standard forms may be provided with a limited vocabulary (art. 25, para. 3 of the Fourth Convention).

388/ NEW RULES, *supra* note 118, at 452.

389/ Under article 50, paragraph 4, a special section of the Information Bureau "shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available."

390/ With respect to a party's own nationals, the Commentary notes: "Thus a Party to the conflict may arrange for the evacuation of its own children to an allied or neutral country without having to act in accordance with the provisions of this article; the same applies to evacuations of children arranged for by a party to the conflict within its own territory. In the past, such evacuations have been frequently undertaken for various different reasons: to remove children from the dangers of war, to provide adequate food and care for them, to ensure their upbringing and education in satisfactory conditions etc." (COMMENTARY, *supra* note 44, at 911, paras. 3219-3220).

391/ NEW RULES, *supra* note 118, at 481 (stating also that "Article 78 thus changes the law of Article 24 and develops that of Article 49 of the Fourth Convention").

392/ NEW RULES, *supra* note 118, at 481.

393/ Assuming they are protected persons, internally displaced persons who are interned by a party to the conflict would benefit from the regulations applicable to such persons in the Fourth Convention. Generally, the detaining power is obliged to lodge together parents and children, whereas parents may request that their children, who are not interned but are without parental care, be interned with them (art. 82, para. 2 of the Fourth Convention). Internees must be enabled to send an internment card to their family and the Central Information Agency within one week of their internment, sickness, transfer to another place of internment, or hospitalization (art. 106 of the Fourth Convention). Article 107 permits internees to receive regular mail and to send telegrammes, if contact with the outside proves difficult by regular mail. Internees also are allowed visitors, especially near relatives, at regular intervals and as frequently as possible, and they must be allowed to visit their homes in cases of serious illness or death of a relative (art. 116). *See also*, article 75 (5) and 77 (4) of Protocol I regarding the detention of families.

394/ *See* the discussion on discrimination *supra*, paragraphs 50-1.

395/ *E.g.*, article 19 of the Universal Declaration, article 19 (2) of the CCPR, article IV of the American Declaration, article 13 of the American Convention, article 10 of the European Convention, and article 9 (2) of the African Charter.

396/ Regional instruments which provide for a person's right to participate in cultural life implicate language rights. Article XIII of the American Declaration grants everyone the right to participate in the cultural life of the community and to enjoy the arts. In similar terms, States parties to the Protocol of San Salvador recognize this right in article 14 (1) (a). Furthermore, in order to ensure the full exercise of this right, States parties must take steps which include "those necessary for the conservation, development and dissemination of science, culture and art" (art. 14 (2) of the Protocol of San Salvador). Under article 17 of the African Charter, every person "may freely take part in the cultural life of his community" (para. 2), but it is the duty of the State to promote and protect the morals and traditional values recognized by the community (para. 3).

397/ Under article 31, States Parties recognize, *inter alia*, a child's right to participate freely in cultural life and the arts, and are obligated to respect and promote the right of the child to take part fully in cultural and artistic life. Maintaining one's own language is of particular importance to children who should be encouraged to preserve and use their native language. GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 34.

398/ According to the Human Rights Committee, "[t]he right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant [article 19 and article 14.3 (f)]". HRC General Comments, *supra* note 80, No. 23, paragraph 5.3.

399/ Additionally, under article 29 (1) (c) of the Convention on the Rights of the Child, States Parties agree that a child's education shall be directed, *inter alia*, to the development of respect for the child's own cultural identity as well as language and values.

400/ *E.g.*, European Charter for Regional or Minority Languages, approved by the Ministers Committee of the Council of Europe, 29 June 1992, opened for signature 5 November 1992; Framework Convention for the Protection of National Minorities, approved by the Ministers Committee of the Council of Europe, 10 November 1994, opened for signature 1 February 1995.

401/ *Supra*, note 300.

402/ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, *adopted* by General Assembly resolution 47/135 of 18 December 1992 (hereinafter Declaration on the Rights of Persons Belonging to Minorities). The World Conference on Human Rights urged States and the international community to respect the provisions of that Declaration on Minorities. Vienna Declaration, *supra* note 4, Part II, paragraph 26.

403/ This right was reiterated in the Vienna Declaration, *supra* note 4, at Part I, paragraph 19.

404/ Article 4 provides, in relevant part:

> 1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
>
> 2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion,

> traditions and customs, except where specific practices are in violation of national law and contrary to international standards
>
> 3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
>
> 4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory ... .

405/ Article 10(1) of the Paris Minimum Standards (*supra* note 29) reads: "Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language."

406/ *See* the text of article 2 (1) of Protocol II, *supra* paragraph 60.

407/ Provisions in the Fourth Geneva Convention are of less importance to internally displaced persons, but include those pertaining to rules of criminal procedure and the publication of penal provisions (arts. 71, para. 2 and 65) during an occupation. Furthermore, articles 82, paragraph 1, 99, paragraphs 1, 2 and 4, and 107, paragraph 3 relate to language issues in connection with internees. In particular, article 82, paragraph 1 states that, as far as possible, a Detaining Power shall accommodate the internees "according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages."

408/ Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, *proclaimed* by General Assembly resolution 36/55 of 25 November 1981 (hereinafter Declaration on Intolerance and Discrimination Based on Religion or Belief).

409/ *Accord* Vienna Declaration, *supra* note 4, Part I, paragraph 19.

410/ *See, e.g.*, article 18 (3) of the CCPR, article 14 (3) of the CRC, article 12 (3) of the American Convention, and article 9 (2) of the European Convention.

411/ HRC General Comments, *supra* note 80, No. 22, paragraphs 3, 8.

412/ *Id.*, paragraph 8.

413/ *Id.*, paragraph 4.

414/ HRC General Comments, *supra* Note 80, No. 23, paragraph 6.2.

415/ GUIDELINES ON REFUGEE CHILDREN, *supra* Note 111, at 35.

416/ Article 4 (2) of the CCPR and article 27 (2) of the American Convention. The freedom of thought, conscience and religion is similarly pronounced non-derogable in the *Siracusa Principles*, *supra* note 29, paragraph 58. The *Paris Minimum Standards*, *supra* note 29, likewise list the right to freedom of thought, conscience and religion among the non-derogable rights of Section (C) in article 8. Under article 8 of the Declaration on Intolerance and Discrimination Based on Religion or Belief (*supra* note 408) "[n]othing in the ... Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights". In contrast, the right to freedom of religion as proclaimed under the European Convention is derogable.

417/ NEW RULES, *supra* note 118, at 108.

418/ It would thus apply to internally displaced persons who find themselves interned in camps, or detained at one particular place while under the control of one of the parties to the conflict. Under paragraph 1 (d) of article 5, such persons have an absolute right to practise their religion. However, they enjoy the right to receive spiritual assistance from persons performing religious functions, e.g., chaplains, only "if requested and appropriate" (para. (1) (d)). Under article 5 (3) of Protocol II, the same rights are accorded to other persons whose liberty has been restricted in any way for reasons of the armed conflict, but who are not covered by paragraph 1. According to NEW RULES, *supra* note 118, at 645, this category of people consists of persons who have been "only restricted in their liberty of movement for reasons related to the armed conflict ..., for instance by an order prohibiting them to leave their local community at all or during certain hours (curfew). Such restriction may also be due to the factual situation of an isolated locality surrounded by combat zones". *Id.*

419/ Furthermore, article 23, paragraph 1 of the Fourth Convention provides that the free passage of objects necessary for religious worship must be permitted, in so far as these objects are intended for civilians of another High Contracting Party.

Internally displaced persons who are internees also enjoy, to a certain degree, religious freedom under the Fourth Geneva Convention. For example, article 93 provides that "[i]nternees shall enjoy complete latitude in the exercise of their religious duties, including attendance at the services of their faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities". Remaining provisions in this article concern ministers of religion who are interned themselves, as well as the furnishing of ministerial services by others in the local community. Moreover, under article 86 of the Fourth Convention, the detaining power must place premises suitable for the holding of religious services at the disposal of internees, regardless of denomination. Article 108 grants internees the right to receive devotional books and objects while article 130 deals with burial rites of deceased internees in accordance with their religion.

420/ Article 6 of the ICESCR recognizes the right to work as including "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts". The article is considered a logical outgrowth of article 55 (a) of the United Nations Charter which requires the United Nations to "promote ... full employment". *Accord* ILO Convention No. 122, Convention concerning Employment Policy (Employment Policy Convention, 1964) *adopted* 9 July 1964, *entered into force* 15 July 1966, *reprinted in* INTERNATIONAL LABOUR ORGANIZATION, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS 1919-1991, 810-11 (1992).

421/ These steps include "technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual". Article 6 (2) of the ICESCR.

422/ Article 5 (e) of the Race Convention guarantees non-discrimination on the ground of race in the field of economic, social and cultural rights. Those rights are listed as including the "rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration" as well as the "right to form and join trade unions" and "the right to education and training" (art. 5 (e) (i), (ii), (v), respectively).

423/ Articles 31 (g) and 43 (b) of the Charter of the Organization of American States, 30 April 1948, *entered into force* 13 December 1951, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3, amended by the Protocol of Buenos Aires, 27 February 1967, *entered into force* 27 February 1970, 21 U.S.T. 607, T.I.A.S. No. 6847, 721 U.N.T.S. 324.

424/ EXCOM Conc. No. 64, *supra* note 110, paragraph (a) (ix).

425/ GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN, *supra* note 111, paragraphs 111-120.

426/ The allusion to protected persons in this section of the Fourth Convention, which comprises articles 35-46, refers to aliens, including those of enemy nationality. For a discussion of the term "protected persons" within the meaning of the Fourth Convention, *see supra* para. 44.

427/ Several provisions of the Fourth Convention apply to work by internees. *E.g.*, article 89, paragraph 4 provides that internees who work shall receive additional food rations which are proportionate to the type of work they perform, whereas under article 90, paragraph 3, workers shall receive suitable working clothes, including protective clothing, if necessary. Article 95, paragraph 1 prohibits a Detaining Power from employing internees as workers, "unless they so desire." This article further provides that "[e]mployment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of articles 40 or 51 of the ... Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited." Paragraphs 2 and 3 of the article deal, *inter alia*, with issues of termination of work, and the rights of the Detaining Power to employ detained doctors, dentists and other medical personnel, or to employ internees for administrative or maintenance work. Article 95, paragraph 4 sets forth rules for the working conditions of internees.

428/ Article 14 of the ICESCR requires States parties without compulsory and free primary education in all territories to adopt a plan of action for its realization.

429/ The right to education was reaffirmed by the participants in the World Conference on Education for All, held in Jomtien, Thailand, 5-9 March 1990. The conference's World Declaration on Education for All: Meeting Basic Learning Needs proclaims in article 3 that basic education should be provided to all children, youth and adults. Furthermore, paragraph 4 of this article provides that an "active commitment must be made to removing educational disparities. Underserved groups - the poor; street and working children; rural and remote populations; nomads and migrant workers; indigenous peoples; ethnic, racial, and linguistic minorities; refugees; those displaced by war; and people under occupation should not suffer any discrimination in access to learning opportunities."

430/ *E.g.*, article 10. Article 11 of the CEDAW requires similar measures regarding the right to receive vocational training and retraining. Under article 14 (2) (d) of this instrument, States parties undertake to work toward ensuring to rural women "all types of training and education, formal and non-formal, including that relating to functional literacy." Articles 29-31 of ILO Convention 169 concerning Indigenous and Tribal Peoples, *supra* note 300, attend to aspects of education in relation to indigenous people.

431/ Convention against Discrimination in Education, *adopted* on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization, *entered into force* 22 May 1962, ratified by 84 States on 1 January 1995. This Convention was, in substance, paralleled by a UNESCO Recommendation against Discrimination in Education applicable to member States of UNESCO who would not become a party to the treaty.

432/ The treaty defines the term "discrimination" as "any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education", in particular, *inter alia*, "[o]f depriving any person or group of persons of access to education of any type or at any level." (art. 1 (1)). The treaty defines "education" as "all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given." (art. 1 (2)).

433/ This right is qualified in that these institutions must provide a standard of education not lower than the general standard that has been laid down or approved by competent authorities, that attendance at such schools is optional, and that the exercise of this right does not prevent members of the minorities from taking part in and understanding the culture and language of the community as a whole. Additionally, the exercise of this right may not prejudice national sovereignty. Article 5 (c) of the Convention Against Discrimination in Education.

434/ For purposes of the CRC, a child is defined as every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier (art. 1).

435/ HRC General Comments, *supra* note 80, No. 17 (3).

436/ Copenhagen Declaration, *supra* note 238, commitment 6, paras. (a) and (e), at 17.

437/ Furthermore, in order to achieve the full exercise of this right, States Parties to the Protocol recognize that primary education must "be compulsory and accessible to all without costs" and that "[b]asic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction" (art. 13, para. 3 (a) and (b)). According to article 16 of the same Protocol, "[e]very child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system."

438/ In addition, article 10 of the European Charter guarantees a right to vocational training.

439/ In reference to the obligation under article 16 (1) of the African Charter to the highest attainable standard of mental health, the Harare seminar noted that "the psycho-social needs (including education), for refugees and internally displaced persons [are] essential components of equal importance to material assistance." Harare Conclusions, *supra* note 4, Conclusions presented by Group C, para. 6, at 6. The seminar also concluded, in relevant part, that the African Commission on Human and Peoples Rights should "review the African Charter on the Rights and Welfare of the Child with the aim of implementing its provisions." *Id.*, para. 3, at 6.

440/ *E.g.*, EXCOM Conc. No. 47, *supra* note 110, para. (o). *See also*, GUIDELINES ON REFUGEE CHILDREN, *supra* note 111, at 109-119, which discuss an array of issues related to education of children, including, *inter alia*, educational goals and standards, non-formal education, planning by qualified professionals, issuance of certificates upon completion of the studies, ways to monitor children's access to and achievement in education and the functioning of educational services.

441/ EXCOM Conc. No. 59, *supra* note 110, para. (f).

442/ Executive Committee of the High Commissioner's Programme, Executive Committee Conclusion B2, Conclusion on Refugee Children, *in* EXCOM 1994 Report, *supra* note 57, para. 23 (c) and (d), at 17-18.

443/ GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN, *supra* note 111, at 16, 21, and paras. 103-110. In order for women to participate as fully as possible in these programmes, due attention must be given to possible cultural barriers inhibiting women's participation in training sessions, as well as their needs for appropriate child care. Furthermore, women should be engaged and consulted in the process of developing and implementing such training programmes. *Id.*, at 56-57.

444/ Executive Committee of the High Commissioner's Programme, Executive Committee Conclusion 81, Conclusion on the Recommendations of the Working Group: Refugee Women, *in* EXCOM 1994 Report, *supra* note 57, para. 22 (b), at 16. *Accord* 1993 Progress Report, *supra* note 111, paras. 35-40.

445/ *See also*, SUPPORT FOR WOMEN IN INTERNALLY DISPLACED SITUATIONS, REPORT OF A JOINT MISSION OF UNDP/UNICEF/UNIFEM/WHO/DHA, 18 OCTOBER-5 NOVEMBER 1993, ORGANIZED BY THE GENDER IN DEVELOPMENT PROGRAMME, UNDP, New York, at 7 (report of a mission to Sierra Leone, Liberia and Ghana). The education team of this mission proposed (in relation to Liberia) to make education of women and girls a basic human right and further proposed "that planning and implementation of education and training programmes (especially for women and girls) occur immediately in the emergency settlements rather than waiting until people can return to their homes."

446/ Article 94 of the Fourth Geneva Convention provides for the possibility of studies and the education of internees. Paragraph 2 of that provision requires that "[a]ll possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside."

447/ Located in Part III of the Fourth Geneva Convention, article 50 applies to protected persons only. Furthermore, minors who are protected persons and who are detained during an occupation must be accorded the special treatment due to minors (arts. 76 para. 5 and 126 of the Fourth Geneva Convention).

448/ Paragraph 2 of this article protects an individual from being compelled to belong to an association.

449/ The application of restrictions on enumerated grounds must respond to a pressing public or social need, pursue a legitimate aim, and be proportionate to that aim, while the assessment of the necessity of such limitations shall be made on objective considerations. *Siracusa Principles*, *supra* note 29, para. 10. *See also*, article 22 (3) of the CCPR, providing that nothing in article 22 shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize "to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."

450/ The right to non-discrimination and equality in the enjoyment of both rights for everyone is recognized in, *inter alia*, the CCPR, the Universal Declaration, and article 5 (d) (ix) of the Race Convention.

451/ Article XXI of the American Declaration states that "[e]very person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature." Furthermore, article XXII of the American Declaration declares that "[e]very person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labour union or other nature." Article 15 of the American Convention recognizes "the right of peaceful assembly, without arms" while article 16 of that Convention states that "[e]veryone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes." Likewise, the rights to freedom of peaceful assembly and to freedom of association with others "including the right to form and to join trade unions for the protection of his interests" are guaranteed in article 11 (1) of the European Convention. Paragraph 2 of this article permits States Parties to restrict the free exercise of the rights on limited grounds. Both rights are also guaranteed in article 11 of the African Charter, but they too may be legitimately restricted. Article 10 (1) of that Charter states that every individual "shall have the right to free association provided that he abides by the law" while paragraph 2 protects an individual against being compelled to join an association.

452/ *See also*, *Siracusa Principles* which state that "[t]he I.L.O. basic human rights conventions contain a number of rights dealing with such matters as ... freedom of association, ... which are not subject to derogation during an emergency; others permit derogation, but only to the extent strictly necessary to meet the exigencies of the situation." *Siracusa Principles*, *supra* note 29, para. 68.

453/ States parties to CERD undertake to guarantee the right of everyone to equality in the enjoyment of the right to political participation without distinction as to race, colour, or national or ethnic origin, which is contained in article 5 (c) CERD.

454/ Convention on the Political Rights of Women, *opened for signature and ratification* by General Assembly resolution 640 (VII) of 20 December 1952, *entered into force* 7 July 1954, ratified by 105 States on 1 January 1995.

455/ Declaration on the Rights of Persons Belonging to Minorities, *supra* note 402, art. 2 (2) and (3). Moreover, under article 6 of ILO Convention No. 169, *supra* note 300, Governments, in applying the provisions of this convention must establish "means by which these [indigenous] peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them." In more general terms, article 3 of ILO Convention No. 169 provides that indigenous and tribal peoples "shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination" (in pertinent part).

456/ General Assembly resolution 150, United Nations GAOR, forty-fifth session, Supp. No. 49A, at 254, United Nations document A/45/49 (1991), at para. 2. *See also*, Popular participation in its various forms as an important factor in development and in the full realization of human rights, Study by the Secretary-General, United Nations document E/CN.4/1985/10 (31 December 1985).

457/ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, adopted at Nairobi, 15-26 July 1985, Part A: The Nairobi Forward-Looking Strategies for the Advancement of Women (United Nations-New York, 1986), United Nations document A/CONF.116/28/Rev.1, paras. 86-92.

458/ *See* Nowak, Commentary, *supra* note 67.

459/ Article 27 (2) of the American Convention.

460/ Article 15 of the Paris Minimum Standards, *supra* note 29, listed under the non-derogable rights of Section (C) of the Paris Minimum Standards. Article 15 almost literally follows the wording of article 21 of the Universal Declaration.

461/ The same duty is stated by articles 55 and 56 of the United Nations Charter. No international consensus has yet been reached as to the precise meaning of this duty to cooperate. Much of the debate centres on whether the concept of "international cooperation" imports a legal obligation on the part of developed nations to assist developing countries.

462/ General Assembly resolution 131, United Nations GAOR, forty-third session, Supp. No. 49, at 207, United Nations document A/43/49 (1989), *adopted without a vote* 8 December 1988 (hereinafter General Assembly resolution 43/131), preambular paragraph 1 and General Assembly resolution 100, United Nations GAOR, forty-fifth session, Supp. No. 49A, at 183, United Nations document A/45/49 (1991), *adopted without a vote* 14 December 1990 (hereinafter General Assembly resolution 45/100), preambular paragraph 2, discussed *infra*.

463/ This interpretation is supported by the general consensus that article 22 of the Universal Declaration connotes at least the necessity of international cooperation for developing countries in the discharge of their obligations (*Alston & Quinn, supra* note 70, nn.119, 120 and accompanying text). Article 22 of the Universal Declaration states: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

464/ *See supra*, paragraphs 68-75.

465/ *See supra*, paragraph 71 and HCR General Comments, *supra*, note 80, No. 6, paragraph 5.

466/ CESCR General Comments, *supra* note 63, No. 3, paragraph 13.

467/ Under article 22, the Economic and Social Council may bring specific situations where international measures are "likely to contribute to the effective progressive implementation" of the CESCR to the attention of other United Nations organs, subsidiary organs and specialized agencies. CESCR General Comments, *supra* note 63, No. 2, paragraph 3 (1990) (in pertinent part). Article 23 sets forth the States parties' agreement that international action include, *inter alia*, furnishing of technical assistance. Indeed, one objective of State party reporting is to enable the Committee and other States parties to "identify the most appropriate means by which the international community might assist States, in accordance with articles 22 and 23 ..." CESCR General Comments, *supra* note 63, No. 1, paragraph 9 (1989).

468/ CESCR General Comments, *supra* note 63, No. 3, paragraph 14.

469/ *See* CESCR General Comments, *supra* note 63, No. 3, paragraph 1.

470/ "[A]ny deliberately retrogressive measures ... would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the [CESCR] and in the context of the full use of the maximum available resources." CESCR General Comments, *supra* note 63, No. 3, paragraph 9.

471/ In General Assembly resolution 43/131, *supra* note 462, which is entitled: Humanitarian assistance to victims of natural disasters and similar emergency situations, the General Assembly recognized "that it is up to each State first and foremost to take care of the victims of natural disasters and similar emergency situations occurring on its territory" (preambular para. 2). Paragraph 2 of the resolution reiterates this as follows:

> "Reaffirms also the sovereignty of affected States and their primary role in the initiation, organization, coordination and implementation of humanitarian assistance within their respective territories;" *Id.*, paragraph 2. The same language is found in General Assembly resolution 45/100, *supra* note 462, preambular paragraph 3 and resolution paragraph 2. In 1991, the General Assembly adopted resolution 46/182 entitled: Strengthening of the coordination of humanitarian emergency assistance of the United Nations. The annex to this resolution contains, *inter alia*, Guiding Principles which state that humanitarian assistance "must be provided in accordance with the principles of humanity, neutrality and impartiality" (para. 2). Paragraph 4 of the Guiding Principles states that:
>
> "4. Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring

> on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory."

Guiding Principles in the Annex to General Assembly resolution 182, United Nations GAOR, forty-sixth session, Supp. No. 49, at 49, 50, United Nations document A/46/49 (1992), *adopted without a vote* 19 December 1991 (hereinafter Annex to General Assembly resolution 46/182).

472/ General Assembly resolution 43/131, *supra* note 462, preambular paragraph 8, and General Assembly resolution 45/100, *supra* note 462, preambular paragraph 6.

473/ General Assembly resolution 43/131, *supra* note 462, paragraph 4, and General Assembly resolution 45/100, *supra* note 462, paragraph 4.

474/ Guiding Principles in the Annex to General Assembly resolution 46/182, *supra* note 471, paragraph 3. Furthermore, these Guiding Principles state in paragraphs 5-7:

> "5. The magnitude and duration of many emergencies may be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance. Such cooperation should be provided in accordance with international law and national laws. Intergovernmental and non-governmental organizations working impartially and with strictly humanitarian motives should continue to make a significant contribution in supplementing national efforts.
>
> 6. States whose populations are in need of humanitarian assistance are called upon to facilitate the work of these organizations in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential.
>
> 7. States in proximity to emergencies are urged to participate closely with the affected countries in international efforts, with a view to facilitating, to the extent possible, the transit of humanitarian assistance."

General Assembly resolution 43/131 (*supra* note 462) and General Assembly resolution 45/100 (*supra* note 462) likewise urge States close to disaster or emergency areas to facilitate the transit of humanitarian assistance (paras. 6 and 7, respectively). The position of the Security Council is described *infra*, paras. 382-89.

475/ Article 5 (3) of the International Red Cross and Red Crescent Movement, adopted by the Twenty-fifth International Conference of the Red Cross at Geneva in October 1986, reproduced in: COMPENDIUM OF REFERENCE TEXTS ON THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT, published by the International Committee of the Red Cross and the League of the Red Cross and Red Crescent Societies (1990), at 17.

476/ Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief (hereinafter Code of Conduct), approved by resolution 6, A Code of Conduct for Organizations Taking Part in Disaster Relief Operations, in Resolutions of the Council of Delegates (adopted at its session of 29-30 October 1993, in Birmingham), *printed in* 297 INTERNATIONAL REVIEW OF THE RED CROSS 488, 495-96 (1993). The Code of Conduct, which is voluntary, was developed by the Humanitarian Response Steering Committee and the ICRC. Non-governmental organizations are invited to endorse the Code. This Code of Conduct was preceded by resolution XXVI, Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations, adopted by the XXIst International Conference of the Red Cross, Istanbul, September 1969, *printed in* XXIST INTERNATIONAL CONFERENCE OF THE RED CROSS, RESOLUTIONS, at 27. Aforementioned resolution 6 also recognized that "for the components of the International Red Cross and Red Crescent Movement, the Fundamental Principles of the Movement and then the Principles and Rules for Red Cross and Red Crescent Disaster Relief have precedence over the Code of Conduct". Resolution 6, preambular paragraph 3.

477/ NEW RULES, *supra* note 118, at 695. The NEW RULES submit that these duties imply "an *obligation to accept offers* made under Article 18, paragraph 1 if the party itself is unable or unwilling to take the necessary measures through its own agents" (*Id.*, at 695). Under the second sentence of article 18 (1), the civilian population, even at its own initiative, "may ... offer" to collect and care for the wounded, sick and shipwrecked, but they do not have a right to this effect. *Id.*, at 696.

478/ Prior to the adoption of Protocol II, the General Assembly had already affirmed that, "without prejudice to their future elaboration within the framework of progressive development of the international law of armed conflict", international relief to civilian populations conforms with the humanitarian principles of the United Nations Charter, the Universal Declaration and other international human rights instruments. General Assembly resolution 2675, *supra* note 114, preambular paragraph 9 and paragraph 8. The resolution further stated that: "[t]he Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations, as laid down in resolution XXVI adopted by the twenty-first International Conference of the Red Cross, shall apply in situations of armed conflict, and all parties to a conflict should make every effort to facilitate this application" (para. 8 in relevant part).

479/ NEW RULES, *supra*, note 118, at 696.

480/ *Id.*

481/ *Id.*, at 697.

482/ Protocol II also contains a provision regarding relief for persons who are deprived of or otherwise restricted in their liberty for reasons related to the internal hostilities. Specifically, article 5 (1) (c) of the Protocol grants those who are interned or detained the right to receive individual or collective relief. Paragraph 3 of this article accords the same right to other persons whose liberty has been restricted for whatever reason related to the hostilities, but who are not covered by paragraph 1.

483/ Internees are permitted to receive relief packages, individually or collectively, under article 108 of the Fourth Convention, but the number of such consignments, which may contain, *inter alia*, food, clothing, medical supplies, and devotional, educational or recreational books or objects, may be restricted on grounds of military necessity. In the case of transfer of the internee, mail and packages must be forwarded to him or her without delay (art. 128, para. 3 of the Fourth Convention). Article 109 of this treaty as well as its Annex II (Draft Regulations Concerning Collective Relief) provide for the distribution and receipt of collective relief for internees.

484/ NEW RULES, *supra* note 118, at 432.

485/ Article 70 incorporates by reference the following supplies mentioned in article 69 of Protocol I: "clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population ... and objects necessary for religious worship".

486/ *See* NEW RULES, *supra* note 118, at 429.

487/ *Id.*, at 433. Regarding the kind of organization that can undertake relief actions, the NEW RULES state that "[i]n principle, it could be anybody, ... a private individual, a national relief society, the League of Red Cross Societies, the ICRC, a non-governmental international organization [or] a governmental international organization ..." *Id.*

488/ Such an agreement under article 70 of Protocol I "... has to be granted as a matter of principle, but ... it can be refused for valid and compelling reasons", such as imperative considerations of military necessity. NEW RULES, *supra* note 118, at 434.

489/ *Id.*, at 436.

490/ *See also, supra* paragraph 193.

491/ Article 81 (2) and (3) impose similar duties on parties to the conflict and/or States parties to grant access to Red Cross, Red Crescent, Red Lion and Sun, and League of Red Cross Societies, whereas paragraph 4 extends this duty, as far as possible, with respect to any other humanitarian organization referred to in the 1949 Geneva Conventions and Protocol I.

492/ Regarding questions of access, *see infra*, paras. 390-395.

493/ The Final Declaration of the International Conference for the Protection of War Victims urges States to make every effort to

> "[i]mprove the coordination of emergency humanitarian actions in order to give them the necessary coherence and efficiency, provide the necessary support to the humanitarian organizations entrusted with granting protection and assistance to the victims of armed conflicts and supplying, in all impartiality, victims of armed conflicts with goods or services essential to their survival, facilitate speedy and effective relief operations by granting to those humanitarian organizations access to the affected areas, and take the appropriate measures to enhance the respect for their safety, security and integrity, in conformity with applicable rules of international humanitarian law."

FINAL DECLARATION OF THE CONFERENCE, INTERNATIONAL CONFERENCE FOR THE PROTECTION OF WAR VICTIMS (Geneva, 30 August-1 September 1993), *reprinted in* 296 INTERNATIONAL REVIEW OF THE RED CROSS 377, 380, paragraph II/8 (hereinafter FINAL DECLARATION).

494/ Security Council resolution 688 (1991) of 5 April, United Nations document S/RES/688 (1993).

495/ *See* Security Council resolution 876 (1993) of 19 October 1993, United Nations document S/RES/876 (1993) concerning the situation in Abkhazia affirming "the right of refugees and displaced persons to return to their homes" (para. 5) and calling for "unimpeded access for international humanitarian relief assistance in the region.". Security Council resolution 898 (1994) of 23 February 1994, United Nations document S/RES/898 (1994), paragraph 18: "Urges all parties to continue to facilitate unimpeded access to humanitarian assistance for the civilian population in need, and also to cooperate with the United Nations High Commissioner for Refugees and other humanitarian agencies operating in Mozambique to facilitate the speedy repatriation and resettlement of refugees and displaced persons."

496/ Security Council resolution 853 (1993) of 29 July 1993, United Nations document S/RES/853 (1993). This call is repeated in resolution 874 (1993).

497/ Security Council resolution 733 (1992) of 23 February 1992, United Nations document S/RES/733 (1992), para. 7 and Security Council resolution 751 (1992) of 24 April 1992, United Nations document S/RES/751 (1992), para. 14 on Somalia. Similar Security Council resolution 770 (1992) of 13 August 1992, United Nations document S/RES/770 (1992), para. 2 on Bosnia and Herzegovina.

498/ Security Council resolution 794 (1992) of 3 December 1992, United Nations document S/RES/794 (1992), preambular para. 7.

499/ *Id.*, preambular para. 3.

500/ *Id.*, para. 10.

501/ Security Council resolution 929 (1994) of 22 July 1994, United Nations document S/RES/929 (1994).

502/ Security Council resolution 925 (1994) of 8 June 1994, United Nations document S/RES/925 (1994), para. 4. The same goals were already set forth in Security Council resolution 918 (1994) of 21 April 1994, United Nations document S/RES/918 (1994), paragraph 3; in its preambular paragraphs, the resolution referred, *inter alia*, to "the internal displacement of a significant percentage of the Rwandan population".

503/ UNISOM II (Somalia): Security Council resolution 814 (1993) of 26 August 1993, United Nations document S/RES/814 (1993), para. 12; Security Council resolution 897 (1994) of 4 February 1994, United Nations document S/RES/897 (1994), para. 2 (e). UNAMIR (Rwanda): Security Council resolution 872 (1993) of 5 October 1993, para. 3 (f), United Nations document S/RES/872 (1993); Security Council resolution 925 (1994) of 8 June 1994, para. 4 (a), United Nations document S/RES/925 (1994); Security Council resolution 965 (1994) of 30 November 1994, para. 2 (a), United Nations document S/RES/965 (1994).

504/ For a case of a non-international armed conflict, *see* Security Council resolution 876 (1993) of 19 October 1993, United Nations document S/RES/876 (1993), paragraph 7 concerning the situation in Abkhazia (calling upon all parties "for unimpeded access for international humanitarian assistance in the region").

505/ *See* the second preambular paragraph in the quotation from Security Council resolution 929 (1994) of 22 July 1994, United Nations document S/RES/929 (1994), *supra* paragraph 420, and the preambular paragraph from resolution 794 (1992) of 3 December 1992, United Nations document S/RES/794 (1992), cited *supra* paragraph 420.

506/ *See supra* paragraph 366 discussing General Assembly resolution 43/131 and General Assembly resolution 45/100. The Guiding Principles in the Annex to General Assembly resolution 46/182 (*supra*, note 471) reconfirm the pivotal role of access by calling upon all States whose populations are in need of assistance "to facilitate the work of ... [intergovernmental and non-governmental] ... organizations", which work impartially and with strictly humanitarian motives, "in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential" (para. 6).

507/ Code of Conduct, *supra* note 476.

508/ *See also*, Recommendation 3 of Annex I which provides, *inter alia*, that relief supplies and equipment "should normally be allowed free and unrestricted passage ... The temporary importation of necessary relief equipment, including vehicles, light aircraft and telecommunications equipment, should be facilitated by the receiving host Government ...". This Recommendation furthermore provides for the designation of certain radio frequencies by the host country for use by relief organizations.

Recommendation 5 of Annex I states that "[i]n the event of armed conflict, relief actions are governed by the relevant provisions of international humanitarian law". In situations which fall short of armed conflict, article 15 of the Turku/Abo Declaration, *supra* note 29, provides for access of relief workers in the following words: "In situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions or public emergency, humanitarian organizations shall be granted all of the facilities necessary to enable them to carry out their humanitarian activities and, in particular, provide humanitarian access and relief to the population." See also, article 15 of the Draft Model Declaration, *supra* note 60.

509/ This provision states that the Fourth Convention constitutes "no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief".

510/ This article provides in relevant part:

> "Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.
>
> "These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations."

511/ Under article 63, paragraph 1, recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, subject to temporary and exceptional measures imposed by the Occupying Power for urgent reasons of security. Subject to the same measures, other relief societies must be permitted to continue their humanitarian activities under similar conditions. The Occupying Power may not require any changes in the structure or personnel of these societies which would prejudice their activities, unless temporary and exceptional measures by the Occupying Power for urgent reasons of security so demand (para. 1). Paragraph 2 of this article provides that

> "The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues."

512/ This article deals with activities of relief societies and other organizations in the case of detention of protected persons.

513/ NEW RULES, *supra* note 118, at 498.

514/ The need for increased safety for relief workers during hostilities was underlined by the FINAL DECLARATION, *supra* note 493, paragraph I/7 at 378, demanding that "measures be taken at the national, regional and international levels to allow assistance and relief personnel to carry out in all safety their mandate in favour of the victims of an armed conflict. Stressing that peace-keeping forces are bound to act in accordance with international humanitarian law, we also demand that the members of peace-keeping forces be permitted to fulfil their mandate without hindrance and that their physical integrity be respected."

515/ *See, e.g.*, discussion of human rights applicable to personal safety, *supra* paragraphs 66-142. Protection against acts by non-State actors is regularly provided by domestic law.

516/ Convention on the Safety of United Nations and Associated Personnel, annexed to General Assembly resolution 49/59, *adopted without a vote* 9 December 1994, Press Release General Assembly, Resolutions and Decisions adopted by the General Assembly during the first part of its forty-ninth session, at 543, Press Release GA/8860, 31 January 1995, *not yet in force*.

517/ For the purposes of this Convention, article 1 provides, *inter alia*, the following definitions:

(a) "United Nations personnel" means:

(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

(ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

(b) "Associated personnel" means:

(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;

(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency to carry out activities in support of the fulfilment of the mandate of a United Nations operation."

518/ For purposes of the Convention on the Safety of United Nations and Associated Personnel, article 1 (c) defines "United Nations operation" as "an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control: (i) Where the operation is for the purpose of maintaining or restoring international peace and security; or (ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation."

519/ Article 2 (2) of this Convention stating that the "Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies".

520/ Because Protocol II does not contain a separate article for definitions, medical and religious personnel can be understood according to article 8 of Protocol I. Article 8 (c) of Protocol I defines medical personnel as "those persons assigned, by a Party to the Conflict, exclusively to the medical purposes enumerated under subparagraph (e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent of temporary." Besides military and civilian medical personnel of a party to the conflict, including, *inter alia*, those assigned to civil defence organizations, the term "medical personnel" includes medical personnel of medical units or medical transports described in article 9 (2) of Protocol I, as well as medical personnel of national Red Cross, Red Crescent or Red Lion and Sun Societies and other national voluntary aid societies, provided these are duly recognized and authorized by a party to the conflict (art. 8 (c) of Protocol I).

The term "religious personnel" is defined in article 8 (d) of Protocol I as "military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry" and who are attached to the armed forces of a party to the conflict, to medical units or medical transports of a party to the conflict, to civil defence organizations of a party to the conflict, or to medical units or medical transports described in article 9 (2) of Protocol I. Their attachment may be permanent or temporary.

521/ The TURKU/ABO DECLARATION, *supra* note 29, extends this protection in article 14 (1) to "other humanitarian personnel", but otherwise tracks almost literally the wording of article 9 (1) of Protocol II.

522/ Article 8 (e) of Protocol I defines "medical units" as "establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment - including first-aid treatment - of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary." Article 8 (g) defines "medical transport" as "any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict".

523/ The DECLARATION BY THE INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW, *supra* note 115, states that the "obligation to respect and protect medical and religious personnel and medical units and transports in the conduct of military operations is a general rule applicable in non-international armed conflicts" (General Rules, A (5)).

524/ *See also*, paragraph II/9 of the FINAL DECLARATION, *supra* note 493, at 380, which urges States to make every effort to increase "respect for the emblems of the Red Cross and Red Crescent as well as for the other emblems provided for by international humanitarian law and protecting medical personnel, objects, installations and means of transport, religious personnel and places of worship, and relief personnel, goods and convoys as defined in international humanitarian law".

525/ Security Council resolutions 932 (1994) of 30 June 1994 (paras. 10 and 11) and 945 (1994) of 29 September 1994. *See also*, resolution 751 (1992) of 24 April 1992, paragraph 14. The Security Council "... 14. Urges all parties concerned in Somalia to facilitate the efforts ... to provide urgent humanitarian assistance to the affected population in Somalia and reiterates its call for the full respect of the security and safety ...".

526/ Protection of military medical personnel as well as Red Cross staff who are subject to military law is found in the First Geneva Convention.

527/ *See supra* paragraph 209.

528/ During an occupation, article 56 of the Fourth Convention requires that medical personnel be permitted to perform their duties.

529/ In this context, the phrase "respected and protected" is traditionally interpreted as follows: "... they must not knowingly be attacked, fired upon, or unnecessarily prevented from discharging their proper functions. The accidental killing or wounding of such personnel, due to their presence among or in proximity to combatant elements actually engaged, by fire directed at the latter, gives no just cause for complaint." NEW RULES, *supra* note 118, at 118, *citing* the United States Army Field Manual and the Manual of Military Law of the United Kingdom.

530/ NEW RULES, *supra* note 118, at 118-19.

531/ NEW RULES, *supra* note 118, at 90 and 141.

532/ NEW RULES, *supra* note 118, at 151.

533/ Protocol I elaborates in article 15 (5) on the protection of civilian religious personnel and requires that these persons be respected and protected. The article further provides that the provisions of the four Geneva Conventions and Protocol I relating to the protection and identification of medical personnel must equally apply to civilian religious personnel. Naturally, only those religious persons who fall within the definition of religious personnel in article 8 (d) of Protocol I are so protected.

534/ An amended version of Annex I to Protocol I came into force on 1 March 1994. 298 INTERNATIONAL REVIEW OF THE RED CROSS, 27, 28 (1994).

535/ *See* Comprehensive Study, *supra* note 2, at paragraph 55.

536/ *E.g.*, the prohibition of disappearances; *see supra* paragraphs 89-101.

537/ One example is the lack of a statement that "other status" prohibiting discrimination includes the status of being displaced; *see supra* paragraphs 52 and 65.
